

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 - - -
5

6 IN RE: NATIONAL : HON. DAN A.
7 PRESCRIPTION OPIATE : POLSTER
8 LITIGATION :
9 :
10 APPLIES TO ALL CASES : NO.
11 :
12 :
13 :
14 :
15 :
16 :
17 :
18 :
19 :
20 :
21 :
22 :
23 :
24 :

 - HIGHLY CONFIDENTIAL -

SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

 - - -

January 15, 2019

 - - -

15 Videotaped deposition of
16 KEITH FROST taken pursuant to notice, was
17 held at the offices of Morgan Lewis
18 Bockius, 1701 Market Street,
19 Philadelphia, Pennsylvania beginning at
20 9:30 a.m., on the above date, before
21 Michelle L. Gray, a Registered
22 Professional Reporter, Certified
23 Shorthand Reporter, Certified Realtime
24 Reporter, and Notary Public.

 - - -

22 GOLKOW LITIGATION SERVICES
23 877.370.3377 ph| 917.591.5672
24 deps@golkow.com

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 BARON & BUDD, P.C. 3 BY: STERLING CLUFF, ESQ. 4 Encino Plaza 5 15910 Ventura Boulevard, Suite 1600 6 Encino, California 91436 7 (818) 839-2333 8 Scluff@baronbudd.com 9 10 - and - 11 BARON & BUDD, P.C. 12 BY: WILLIAM G. POWERS, ESQ. 13 600 New Hampshire Avenue, NW 14 The Watergate, Suite 10-A 15 Washington, D.C. 20037 16 (202) 333-4562 17 Wpowers@baronbudd.com 18 Representing the Plaintiffs 19 MORGAN LEWIS & BOCKIUS, LLP 20 BY: JOHN P. LAVELLE, JR., ESQ. 21 1701 Market Street 22 Philadelphia, Pennsylvania 19103 23 (215) 963-4824 24 John.lavelle@morganlewis.com 25 26 - and - 27 MORGAN LEWIS & BOCKIUS 28 BY: JOHN M. MALOY, ESQ. 29 101 Park Avenue 30 New York, New York 10178 31 (212) 309-6734 32 john.maloy@morganlewis.com 33 Representing the Defendant, Rite Aid of 34 Maryland and the Witness</p>	<p style="text-align: right;">Page 4</p> <p>1 TELEPHONIC APPEARANCES: 2 JONES DAY 3 BY: CHRISTINE D. PROROK, ESQ. 4 77 West Wacker Drive 5 Chicago, Illinois 60601 6 (312) 269-4113 7 Cprorok@jonesday.com 8 Representing the Defendant, Walmart 9 10 ARNOLD & PORTER KAYE SCHOLER 11 BY: SEAN A. MCCORMICK, ESQ. 12 777 South Figueroa Street, 44th Floor 13 Los Angeles, California 90017 14 (213) 243-4000 15 Sean.mccormick@arnoldporter.com 16 Representing the Defendants, Endo Health 17 Solutions; Endo Pharmaceuticals, Inc.; 18 Par Pharmaceutical Companies, Inc. f/k/a 19 Par Pharmaceutical Holdings, Inc. 20 21 JACKSON KELLY, PALL 22 BY: ANGELA L. FREEL, ESQ. 23 221 NW Fifth Street 24 Evansville, Indiana 47708 25 (812) 422-9444 26 alfreel@jacksonkelly.com 27 Representing the Defendant, 28 Amerisource Bergen Drug Corporation</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: (Cont'd.) 2 PIETRAGALLO GORDON ALFANO BOSICK & 3 RASPANTI, LLP 4 BY: DOUGLAS K. ROSENBLUM, ESQ. 5 1818 Market Street, Suite 3402 6 Philadelphia, Pennsylvania 19103 7 (215) 320-6200 8 Dkr@pietragallo.com 9 Representing the Defendant, Cardinal 10 Health 11 12 COVINGTON & BURLING, LLP 13 BY: J. ALEJANDRO BARRIENTOS, ESQ. 14 850 Tenth Street, NW 15 Suite 586N 16 Washington, D.C. 20001 17 (202) 662-5769 18 Abarrientos@cov.com 19 Representing the Defendant, McKesson 20 Corporation</p>	<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES: (Cont'd.) 2 3 ALSO PRESENT: 4 5 Emma Kaboli, Paralegal 6 (Baron Budd - via telephone) 7 8 VIDEO TECHNICIAN: 9 Devyn Mulholland 10 11 LITIGATION TECHNICIAN: 12 Zach Hone 13 14 15 16 17 18 19 20 21 22 23 24</p>

I N D E X

Testimony of:

KEITH FROST

By Mr. Cluff 12, 305

By Mr. Lavelle 286

E X H I B I T S

NO.	DESCRIPTION	PAGE
Rite Aid Frost-1	Performance	91
	Management Annual Performance Review	
	FY2014 - Keith Frost	
	Rite_Aid_OMDL_0050596-25	
Rite Aid Frost-2	E-mail, 5/20/11	151
	Subject, Quarterly Sign Offs	
	Rite_Aid_OMDL_0013210-30	

E X H I B I T S (Cont'd.)

NO.	DESCRIPTION	PAGE
Rite Aid Frost-9	E-mail Thread	220
	2/20/12 Subject, Cage Access	
	Rite_Aid_OMDL_0010825-26	
Rite Aid Frost-10	E-mail Thread	227
	3/31/10 Subject, DEA Compliance	
	Rite_Aid_OMDL_0023456-57	
Rite Aid Frost-11	E-mail Thread	236
	5/5/10 Subject, Late CD Receipts	
	Rite_Aid_OMDL_0010116-17	
Rite Aid Frost-12	E-mail Thread	244
	5/30/12 Subject, Compliance Violation	
	Rite_Aid_OMDL_0029175-76	
Rite Aid Frost-13	E-mail Thread	249
	7/15/10 Subject, Cage Product In Trash	
	Rite_Aid_OMDL_0013911-14	

E X H I B I T S (Cont'd.)

NO.	DESCRIPTION	PAGE
Rite Aid Frost-3	E-mail Thread	176
	3/30/10 Subject, Cage Access	
	Rite_Aid_OMDL_0023217	
Rite Aid Frost-4	E-mail Thread	179
	6/4/10 Subject, Cage Access	
	Rite_Aid_OMDL_0023287	
Rite Aid Frost-5	E-mail Thread	184
	1/18/11 Subject, Drug Diversion	
	Rite_Aid_OMDL_0012113-14	
Rite Aid Frost-6	E-mail Thread	197
	6/25/10 Subject, DEA CFRs Employers/Employees	
	Rite_Aid_OMDL_0013963-68	
Rite Aid Frost-7	E-mail Thread	203
	6/30/10 Subject, Cage Access	
	Rite_Aid_OMDL_0011927-28	
Rite Aid Frost-8	E-mail Thread	212
	8/9/10 Subject, Cage Access	
	Rite_Aid_OMDL_0003533-34	

E X H I B I T S (Cont'd.)

NO.	DESCRIPTION	PAGE
Rite Aid Frost-14	E-mail Thread	257
	9/26/12 Subject, CD Inventory	
	Rite_Aid_OMDL_0009662	
Rite Aid Frost-15	E-mail, 1/22/13	269
	Subject, CSA Checklist	
	Rite_Aid_OMDL_0013234	
Rite Aid Frost-16	E-mail Thread	277
	3/3/14 Subject, P&P Review Report Reaccreditation	
	Rite_Aid_OMDL_0015596-77	
Rite Aid Frost-17	Notice of Inspection	287
	Of Controlled Premises	
	7/10/12 Rite_Aid_OMDL_0032621	
Rite Aid Frost-18	E-mail, 7/11/12	290
	Subject, Please Review DEA Audit July 11	
	Rite_Aid_OMDL_0012547-49	

<p style="text-align: right;">Page 10</p> <p>1 - - -</p> <p>2 DEPOSITION SUPPORT INDEX</p> <p>3 - - -</p> <p>4</p> <p>5 Direction to Witness Not to Answer</p> <p>6 PAGE LINE</p> <p>7 None.</p> <p>8 Request for Production of Documents</p> <p>9 PAGE LINE</p> <p>10 None.</p> <p>11 Stipulations</p> <p>12 PAGE LINE</p> <p>13 None.</p> <p>14 Questions Marked</p> <p>15 PAGE LINE</p> <p>16 None.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 12</p> <p>1 - - -</p> <p>2 BY MR. CLUFF:</p> <p>3 Q. Good morning, Mr. Frost. My</p> <p>4 name is Sterling Cluff. I'm from a law</p> <p>5 firm called Baron & Budd, and I represent</p> <p>6 plaintiffs in this national opiate</p> <p>7 litigation. And I'll be taking your</p> <p>8 deposition today. My colleague next to</p> <p>9 me is Will Powers, who's also with Baron</p> <p>10 & Budd. He will be assisting me.</p> <p>11 And then you may have met</p> <p>12 the other attorneys around the way.</p> <p>13 They're all for defendants, except for</p> <p>14 the trial tech who will be assisting me</p> <p>15 as well. Just so you know who all is in</p> <p>16 the room.</p> <p>17 So to start off, I'd like to</p> <p>18 ask you if you've ever had your</p> <p>19 deposition taken before?</p> <p>20 A. No, I haven't.</p> <p>21 Q. Okay. Have you ever</p> <p>22 testified in a trial at all?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So -- and the trial I</p>
<p style="text-align: right;">Page 11</p> <p>1 THE VIDEOGRAPHER: We are</p> <p>2 now on the record. My name is</p> <p>3 Devyn Mulholland. I'm a</p> <p>4 videographer for Golkow Litigation</p> <p>5 Services.</p> <p>6 Today's date is</p> <p>7 January 15th, 2019. The time is</p> <p>8 9:30 a.m.</p> <p>9 This video deposition is</p> <p>10 being held in Philadelphia,</p> <p>11 Pennsylvania, in the matter of</p> <p>12 National Prescription Opiate</p> <p>13 Litigation.</p> <p>14 The deponent is Keith Frost.</p> <p>15 Counsel will be noted on the</p> <p>16 stenographic record. The court</p> <p>17 reporter is Michelle Gray and will</p> <p>18 now swear in the witness.</p> <p>19 - - -</p> <p>20 ... KEITH FROST, having been</p> <p>21 first duly sworn, was examined and</p> <p>22 testified as follows:</p> <p>23 - - -</p> <p>24 EXAMINATION</p>	<p style="text-align: right;">Page 13</p> <p>1 assume you were also placed under oath --</p> <p>2 A. Yes.</p> <p>3 Q. -- so you are familiar</p> <p>4 with --</p> <p>5 Okay. Thank you.</p> <p>6 MR. LAVELLE: Just wait</p> <p>7 until the question is finished</p> <p>8 before you answer it.</p> <p>9 BY MR. CLUFF:</p> <p>10 Q. Right. So since you haven't</p> <p>11 given a deposition before, I'd like to</p> <p>12 lay down or discuss some sort of rules of</p> <p>13 the road that we call admonitions. One</p> <p>14 of them, as your counsel just pointed</p> <p>15 out, is that we try not to talk over each</p> <p>16 other because we're trying to take down</p> <p>17 an accurate written record of today's</p> <p>18 proceedings. So if you could, to the</p> <p>19 best of your ability give me a chance to</p> <p>20 finish my question. I will do my best to</p> <p>21 let you finish your answer. And your</p> <p>22 counsel at times today will be</p> <p>23 interposing objections to my questions.</p> <p>24 And we should both do our best to let him</p>

<p style="text-align: right;">Page 14</p> <p>1 finish those before we speak as well. 2 Does that make sense? 3 A. Yes. 4 Q. Also because we are taking a 5 written record of the proceedings, we ask 6 that you, to the best of your ability, 7 give an audible answer rather than saying 8 "mm-hmm" or "unh-unh" or shaking your 9 head. Like "yes," "no," "I don't know" 10 or whatever you deem a more appropriate 11 answer to be. Does that make sense? 12 A. Yes. And this is the 13 microphone here in front of me. 14 Q. Yeah, that thing in front of 15 you does appear to be a microphone. That 16 is probably for the telephone though. 17 You've got a microphone on your shirt 18 which is recording you audibly as well. 19 As a reminder, when we take 20 breaks, be sure to take that off, so that 21 you don't walk out with it. 22 Since you're under oath, we 23 will understand today that the answers 24 that you're giving are the best</p>	<p style="text-align: right;">Page 16</p> <p>1 under any medical treatment that would 2 prevent you from giving a full and 3 complete deposition today? 4 A. No. 5 Q. Are there any reasons that 6 your memory or recollection may be 7 impaired during today's deposition? 8 A. No. 9 Q. Okay. Do you understand why 10 you're here to be deposed today? 11 A. Yes. 12 Q. Okay. What is your 13 understanding? 14 A. That there's a lawsuit 15 against some drug companies for the 16 opioid issues going on in the country. 17 Q. I should also give you one 18 more clarification. At times I may ask 19 you questions that could potentially call 20 for an answer that is influenced or based 21 on conversations that you had with your 22 counsel today. If you believe that a 23 question I asked requires you to disclose 24 information or conversations that you had</p>
<p style="text-align: right;">Page 15</p> <p>1 recollection that you can give. In order 2 to make that a clear record for the 3 proceedings we ask that you not guess. 4 However at times I may ask 5 you questions to better explore your 6 recollection or your understanding. And 7 I may also at times ask you for an 8 approximation or an estimate. Do you 9 know the difference between an estimate 10 and an approximation or a guess? 11 A. Yes. 12 Q. Okay. We're going to be 13 covering a lot of information today that 14 may at times seem confusing to you. If 15 at any point in time you don't understand 16 my question, please ask me to clarify it. 17 If not, I will assume that you understood 18 the question. Does that make sense? 19 A. Yes. 20 Q. Okay. Is there any reason 21 today health-wise that you cannot give a 22 full and complete deposition? 23 A. No. 24 Q. Are you on any medication or</p>	<p style="text-align: right;">Page 17</p> <p>1 with your attorney, please let me know. 2 And your attorney will also object if he 3 feels that a question I asked asks for 4 what's called attorney/client privilege. 5 So I don't want you to disclose any 6 attorney/client privilege today. 7 Is that clear? Does that 8 make sense? 9 A. Yes. 10 Q. So going back to the reason 11 you're here to testify today. We 12 noticed -- we as plaintiffs noticed your 13 deposition in relation to a defendant in 14 this case, Rite Aid specifically. 15 Are you currently employed 16 by Rite Aid? 17 A. Yes, I am. 18 Q. And what position do you 19 hold at Rite Aid currently? 20 A. I'm currently a department 21 manager of a department called 22 centralized products. 23 Q. Okay. What does the 24 centralized products department do?</p>

<p style="text-align: right;">Page 18</p> <p>1 A. They pick front -- what we 2 call other front-end items in the stores, 3 cosmetics, energy drinks, vitamins, 4 ethnic beauty care. And we also manage 5 the pseudoephedrine control cage in the 6 building. 7 Q. When you say they pick, what 8 do you mean they pick? 9 A. Our associates get the items 10 and put them in packages or totes to send 11 to our customer stores. 12 Q. So they're actually picking 13 the items out of some group of inventory 14 to be delivered to the stores? 15 A. Yes, out of forward pick. 16 Q. What's a forward pick? 17 A. A forward pick is a location 18 where the product is loose in boxes or 19 sometimes it could be cases. It's an 20 area where, when the orders download, a 21 light lights up. It's called a 22 pick-to-light system. And a number 23 appears. And that's what the store wants 24 of that particular item in that</p>	<p style="text-align: right;">Page 20</p> <p>1 building. But being a manager in the 2 building, part of my responsibility is to 3 help other departments when I see it 4 necessary. So we -- we are a global 5 system where we help each other out. But 6 I'm mainly responsible for my centralized 7 products department. 8 Q. Do you work at the Perryman 9 distribution center? 10 A. Yes. 11 Q. Have you always worked at 12 the Perryman distribution center? 13 MR. LAVELLE: Object to 14 form. 15 THE WITNESS: With Rite Aid, 16 yes. 17 BY MR. CLUFF: 18 Q. So the work that you 19 oversee, other than you are a manager of 20 the centralized products, that is -- that 21 work is conducted at the Perryman 22 distribution center? 23 A. Yes, it is. 24 Q. How long have you held this</p>
<p style="text-align: right;">Page 19</p> <p>1 particular location. And the associate 2 goes to that location, look at the 3 number, and puts the item into the tote 4 or box, and then extinguishes the light, 5 and moves onto the next location for the 6 next item that the store wants. 7 Q. This work that the 8 associates are doing, the picking work, 9 is that happening -- where is that 10 happening? 11 A. Distribution center wide, 12 different departments have the same 13 Pick-to-Light system, it's just they have 14 different items to put into the boxes or 15 totes. 16 One department might have 17 shampoos and bleach. We have cosmetics 18 and vitamins. Another one might have 19 bulk cases that they're put into totes. 20 Q. As a manager in this 21 department, are you assigned to a 22 specific location? 23 A. My department covers 24 different locations to -- to parts of the</p>	<p style="text-align: right;">Page 21</p> <p>1 position as manager of centralized 2 products? 3 A. Well, this is like my second 4 tour of it. Before I was an operations 5 manager of that, when it was -- included 6 pharmacy and our cigarettes department. 7 But that operations manager level has 8 been done away with a few years ago, so 9 now it's a department level position. 10 And so I've been doing this since 2010. 11 Q. You mentioned that this is 12 your second tour as a manager of 13 centralized products. And before that -- 14 or -- or in between those tours maybe, 15 you were an operations manager of 16 pharmacy and cigarettes; is that correct? 17 A. Yes, yes. 18 Q. When did you hold the 19 position of operational manager over 20 pharmacy and cigarettes? 21 A. It gets sort of complex. 22 When they first opened the building I was 23 night operations manager for four and a 24 half years. And all the assistant</p>

<p style="text-align: right;">Page 22</p> <p>1 managers on nightshift from seven 2 departments, which included the pharmacy 3 department, all reported up to me. So 4 that was for four and a half years. 5 And then for another two 6 years as a department manager, I took 7 over the pharmacy department and 8 cigarettes. 9 Then after that, took over 10 other departments as Operations Region 1, 11 Region 2, our satellite facility and 12 shipping department for two years. Then 13 came back to pharmacy for two years as a 14 department manager for Rx, pharmacy, and 15 cigarettes for a year. And then after 16 that I went to the replenishment 17 department which controls all of the 18 drivers and the stockers in the building, 19 for a year and a half. And then came 20 back in 2010 till present to take over 21 the pharmacy and cigarettes and 22 centralized products department. 23 Q. Is the -- the pharmacy and 24 cigarettes, is that a part of the</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Mm-hmm, yes. 2 Q. And during that time you 3 said all of the nightshift -- all the 4 assistant managers in the nightshift 5 reported to you, correct? 6 A. Yes. 7 Q. And you referred to seven 8 departments which included the pharmacy 9 department? 10 A. Yes. 11 Q. What were the seven 12 departments? 13 A. Pharmacy, cigarettes, 14 centralized products, the 15 shipping/outbound department, inbound 16 department, Regional 1 department, 17 Region 2 department, and the 18 replenishment department, stocking and 19 driving. 20 Q. Pharmacy and cigarettes is 21 one department, correct? 22 A. We try to keep it together 23 like that because they both dealt with 24 compliance, state or federal issues. And</p>
<p style="text-align: right;">Page 23</p> <p>1 centralized products department? 2 A. No longer. 3 Q. Was it at the time in 2010? 4 A. Yes. 5 Q. You gave me a lot of 6 information about different positions. 7 So I just kind of want to understand the 8 timeline here. 9 You said when they first 10 opened the building you were a night 11 operations manager for four and a half 12 years? 13 A. Correct. Yes. 14 Q. When you refer to the 15 building, do you mean the Perryman 16 distribution center? 17 A. Yes. 18 Q. Do you recall what -- when 19 that was? 20 A. 1998 in August is when we 21 started the nightshift, until March 2003. 22 Q. So you held the position of 23 nightshift manager from '98 to 2003, is 24 that your recollection?</p>	<p style="text-align: right;">Page 25</p> <p>1 we'd rather have that under one umbrella 2 as opposed to spreading it out. 3 Q. You said after you were the 4 night manager, then you said for another 5 two years you were a department manager 6 over pharmacy and cigarettes? 7 A. No. After the night 8 manager, which is end of February 2003, 9 beginning March 2003, I was operations 10 manager for pharmacy and cigarettes. 11 Q. And how long did you hold 12 that position? 13 A. Oh, that was for two years. 14 Q. So sometime in 2005? 15 A. Mm-hmm. 16 MR. LAVELLE: You -- you 17 need to give an audible answer 18 such as no -- 19 THE WITNESS: I'm sorry. 20 2003 to 2005, yes. 21 BY MR. CLUFF: 22 Q. I believe then you testified 23 that you went to the replenishment 24 department?</p>

<p style="text-align: right;">Page 26</p> <p>1 A. From 2005 to 2007 they put 2 me in charge of Region 1, Region 2, 3 outbound, and our satellite facility. 4 And that was for two years. 5 Q. What's Region 1? 6 A. It's, if you walk into our 7 stores, it's any -- a lot of -- shampoos, 8 candy bars, hair nets, nail clips, 9 bleach, a lot of different front-end 10 items. 11 Q. What's Region 2? 12 A. Region 2 is sort of like the 13 Region 1 except it's more bulk case. We 14 have a lot of cases going out and very 15 large items, like your 2, 3-gallon kinds 16 of bleach, bulk kind of picking. 17 Non-conveyor belt kind of items that 18 people have to pick by hand on -- with 19 machinery and you can't put it on the 20 line to convey to our shipping 21 department. 22 Q. What -- what other 23 responsibilities of the outbound 24 department and the satellite facility</p>	<p style="text-align: right;">Page 28</p> <p>1 Perryman distribution center, so we had 2 to rent a facility to accommodate that. 3 Then that was one of those seasonal 4 things, so you get a lot of product for 5 like three or four months. The season go 6 away, then you might get garden, tools 7 for a couple months. So it was a 8 facility that the population of the 9 workers would go up and down as -- as the 10 year went along. 11 Q. So what was the next 12 position that you held after 2007? 13 A. After 2007 I came over to 14 pharmacy again for a year. It was just 15 pharmacy and cigarettes at that time. 16 That's when they eliminated the 17 operations manager level for budgetary 18 reasons. I was there for a year. 19 Q. And what did you do after -- 20 what was your next position after that? 21 A. After that I took over the 22 replenishment department, and 23 replenishment entailed the drivers and 24 stockers, and I was there for a year and</p>
<p style="text-align: right;">Page 27</p> <p>1 that you were managing? 2 A. With the outbound department 3 we had to make sure that all of our 4 trailers were loaded properly and that -- 5 for example, we talk about pharmacy and 6 control drugs, that everything was 7 brought over correctly, that all control 8 drugs and pharmacy packages and totes all 9 looked exactly the same per DEA 10 requirements so you can distinguish 11 between a legend drug or control drug. 12 And that any control drugs brought over 13 to the shipping area were properly being 14 held in control-type cages and handed out 15 and signed for properly to the different 16 trucks that went to our DCs properly. 17 Q. And -- and what about the 18 responsibilities as a manager of the 19 satellite facility, what did that entail? 20 A. I had a department manager 21 work over there. And that was mainly a 22 seasonal facility. When you have 23 harvest, garden, Christmas is a big one. 24 We don't have enough room in our main</p>	<p style="text-align: right;">Page 29</p> <p>1 a half, till 2010. 2 And then I came back to 3 pharmacy and cigarettes in 2010, and 4 centralized products. 5 Q. And those are the positions 6 you've held since 2010, correct, the 7 pharmacy and cigarettes and -- 8 A. Centralized products. 9 Q. Yes. 10 MR. LAVELLE: Please wait 11 until the question is finished 12 before you answer it. 13 THE WITNESS: Okay. 14 BY MR. CLUFF: 15 Q. Between 2010 and the 16 present, what years did you hold 17 managerial responsibilities for pharmacy 18 and cigarettes? 19 A. 2010 to now, so it's nine 20 years later, so far. 21 Q. Were you a manager over 22 pharmacy and cigarettes for that entire 23 time period? 24 A. 2010 till now, yes.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. At what point between 2010 2 and the present were you a manager of the 3 centralized products? 4 A. I am -- same, same period. 5 Q. So those responsibilities 6 are sort of overlapping? 7 A. Yes. 8 Q. Understood. Thank you. 9 During your time period with 10 Rite Aid, excuse me, have you been 11 responsible for managing the distribution 12 or -- or shipping of controlled 13 substances? 14 MR. LAVELLE: Object to 15 form. 16 THE WITNESS: Yes. It came 17 under my purview. 18 BY MR. CLUFF: 19 Q. In -- in what positions were 20 you responsible for overseeing the 21 distribution and shipping of controlled 22 substances? 23 A. What positions? 24 Q. Let me clarify. At one</p>	<p style="text-align: right;">Page 32</p> <p>1 the -- let me back up. When you say III 2 through V, do you mean those are the 3 schedules of controlled substances that 4 you were responsible for? 5 A. Yes. 6 Q. Do you recall if any of 7 those substances included prescription 8 opioids? 9 A. No, I do not. 10 Q. Do you recall if, during the 11 time period when you've worked at Rite 12 Aid, Rite Aid distributed or shipped 13 hydrocodone combination products? 14 A. We shipped hydrocodones. 15 Q. Would your work as a manager 16 have involved overseeing shipments of 17 hydrocodone? 18 A. Yes. 19 Q. Okay. When you used the 20 word "compliance" to refer to the work 21 with the pharmacy and cigarette products, 22 what did you mean by compliance? 23 A. Well, there's different -- I 24 mean, you have pharmacy, and you have</p>
<p style="text-align: right;">Page 31</p> <p>1 point you discussed that, in your 2 experience, Rite Aid tried to keep the 3 pharmacy and cigarettes department 4 together because those both involved 5 compliance. 6 A. Yes. 7 Q. Did -- did your work in -- 8 in those two departments involve 9 overseeing distribution or shipping of 10 controlled substances? 11 A. Yes. 12 Q. Are there any other 13 managerial positions that you held that 14 involved overseeing the shipment or 15 distribution of controlled substances? 16 A. No. Just operations manager 17 or department manager. 18 Q. Do you recall which 19 controlled substances or which types of 20 controlled substances you were 21 responsible for? 22 A. Yes. Not all by name. But 23 we only did III through V. 24 Q. Do you recall if any of</p>	<p style="text-align: right;">Page 33</p> <p>1 cigarettes. Which one are you asking 2 about? 3 Q. Let's focus on pharmacy. 4 A. Okay. Pharmacy, we followed 5 all the regulations that were established 6 in the Code of Federal Regulations that 7 the DEA puts out. And we also followed 8 the Maryland Pharmaceutical Appendix for 9 processing controlled drugs and other 10 pharmacy products. 11 Q. When you refer to the 12 regulations that were established that 13 the DEA put out, what do you mean 14 specifically? 15 A. Well, the Code of Federal 16 Regulations is -- specifies that before 17 you can handle any kind of controlled 18 substance, you have to have procedures 19 which account for the proper receiving of 20 items, make sure they're not counterfeit 21 and they're only coming from registered 22 DEA authority -- vendors, that you store 23 them properly, meaning that you inventory 24 them regularly and that you do not have</p>

Page 34

1 expired products in a cage, that when you
 2 pick them that you use correct order
 3 picking procedures, that you ship it
 4 correctly to the stores, and that you
 5 properly have controls into the proper
 6 shipment of controlled drugs, and you
 7 have full accountability and inventory
 8 control of all items.

9 Q. During your tenure with Rite
 10 Aid, while there was a pharmacy
 11 department -- actually, let me ask this
 12 other question.

13 Are you aware if Rite Aid at
 14 any point stopped distributing or
 15 shipping hydrocodone products?

16 MR. LAVELLE: Object to
 17 form.

18 THE WITNESS: Rite Aid
 19 stopped shipping any controlled
 20 substances in 2014, September,
 21 October time frame. And that
 22 include legend drugs as well.

23 BY MR. CLUFF:

24 Q. Those are what legend drugs?

Page 35

1 A. Over-the-counter drugs,
 2 other prescription drugs that are not
 3 controlled substances.

4 Q. So Rite Aid stopped
 5 distributing legend drugs in 2014 as
 6 well?

7 A. Yes.

8 Q. Do you -- are you aware of
 9 when Rite Aid began distributing
 10 hydrocodone products?

11 A. When you mean Rite Aid, are
 12 you talking about the Perryman
 13 distribution center or Rite Aid in
 14 general?

15 Q. Let's start with Rite Aid in
 16 general.

17 A. No. It was -- when I -- I
 18 was hired in 1998, and they had been
 19 doing it a number of years. So I don't
 20 know when they started.

21 Q. So when you were hired they
 22 were already shipping hydrocodone
 23 products?

24 A. Yes.

Page 36

1 Q. So when I ask questions
 2 about those hydrocodone products then,
 3 I'd like us to just understand that my
 4 questions refer to that time period
 5 before 2014 when Rite Aid stopped
 6 distributing them. Does that make sense?

7 A. Yes.

8 Q. So before Rite Aid stopped
 9 distributing the hydrocodone products in
 10 2014, did Rite Aid have in place policies
 11 or procedures to address all of the
 12 compliance work that you just described
 13 to me?

14 A. Yes.

15 Q. The first one that you
 16 mentioned earlier was making sure that
 17 the products Rite Aid receives or ships
 18 were not counterfeit. Does that make
 19 sense?

20 MR. LAVELLE: Object to
 21 form.

22 THE WITNESS: Yes.

23 BY MR. CLUFF:

24 Q. Or do you recall that at

Page 37

1 least?

2 A. Yes.

3 Q. Would you have been
 4 responsible for implementing Rite Aid's
 5 policies and procedures about that aspect
 6 of compliance?

7 A. I would be responsible to
 8 make sure that we had policies and
 9 procedures in place, that associates were
 10 trained in executing those, and that we'd
 11 have audits to make sure that the
 12 associates were doing those correctly.

13 Q. You mentioned a number of
 14 other compliance activities. We can go
 15 look at that list, but I want to just ask
 16 a broader question. Were you responsible
 17 for making sure that Rite Aid had
 18 policies and procedures in place for all
 19 of the compliance work that you
 20 previously described?

21 A. Yes.

22 Q. You also mentioned associate
 23 training. Were you responsible for
 24 associate training on all of the

Page 38

1 compliance work that you previously
2 described?

3 A. I was responsible -- I was
4 responsible for ensuring that training
5 was being conducted. I was not an actual
6 trainer.

7 Q. And then you also mentioned
8 audits. Were you also responsible for
9 ensuring that compliance was audited?

10 A. My responsibility as far as
11 doing audits was an internal thing,
12 ensure that quality was being done
13 correctly, that we were doing inventories
14 on schedule as per the Code of Federal
15 Regulations. But we went beyond that and
16 did internal audits on our own.

17 Q. The responsibility for
18 making sure that Rite Aid had policies
19 and procedures in place, associate
20 training, and audits, was that within
21 your managerial responsibilities from
22 1998 to 2014?

23 A. Again, I wasn't there the
24 whole time, 1998 through -- I was there

Page 39

1 in 2003. I can't comment on what
2 procedures and procedures were in place
3 before I got there in 2003.

4 Q. Starting in 2003 you were
5 the manager at Perryman?

6 A. Yes.

7 Q. Okay. So from 2003 to 2014,
8 was it part of your job responsibilities
9 for that entire time period to make sure
10 Rite Aid had policies and procedures in
11 place?

12 A. Correct.

13 Q. Okay. And it was also part
14 of your job responsibilities to ensure
15 that associates were being trained?

16 A. Yes.

17 Q. And also part of your job
18 responsibilities to be overseeing or
19 ensuring that these internal audits were
20 conducted?

21 A. Yes.

22 Q. Is there anyone else
23 affiliated with the Rite Aid Perryman
24 distribution center that had

Page 40

1 responsibility for those -- those job
2 functions or responsibilities?

3 MR. LAVELLE: Object to
4 form.

5 THE WITNESS: Yes.

6 BY MR. CLUFF:

7 Q. Who would that be?

8 A. Any department managers that
9 would be working there, any assistant
10 managers that would have been working
11 there, the DEA coordinator, as well as
12 any leads that we had at the time. Leads
13 would be our hourly paid supervisors.

14 Q. What policies and procedures
15 did Rite Aid have in place between 2003
16 and 2014 to ensure that the controlled
17 substances they were distributing or
18 shipping were not counterfeit?

19 A. Rite Aid had a policy that
20 the receiver, which happened to --
21 actually, the receiver was part of the
22 inbound department. They worked in the
23 control cage. They were required to have
24 a background check. So they technically

Page 41

1 were assigned to that position, but they
2 weren't assigned to the pharmacy
3 department. But all of the receivers
4 were trained to verify that any vendors
5 had the correct DEA number, that -- they
6 had -- they had ways of inspecting the
7 packaging to make sure that the verbiage
8 was correct, that they had a proper NDC
9 number and UPC number, that the dating
10 was correct, according to their packing
11 slip.

12 Q. You also said that part of
13 the compliance work was ensuring that
14 product came from licensed DEA
15 registrants. What policies and
16 procedures did Rite Aid have in place to
17 ensure that it was complying with that
18 part of its obligations?

19 MR. LAVELLE: Object to
20 form.

21 THE WITNESS: Well, that was
22 part of their policy and
23 procedure, that you had to go
24 through a series of steps to

<p style="text-align: right;">Page 42</p> <p>1 validate that the items were 2 coming from a DEA-approved vendor 3 and that -- I mean, we had 4 receiving -- standing operating 5 procedures, you know, an overview 6 on how to do it. But the 7 technical, exactly how to receive 8 it, you had to open up one case to 9 inspect each item from each case 10 to make sure that was correct and 11 dated properly. 12 I mean, there's series of 13 steps within each procedure that 14 they had to follow. 15 BY MR. CLUFF: 16 Q. Was there a written policy 17 and procedure document that they had to 18 follow? 19 A. They had an internal inbound 20 receiving document that explained to them 21 exactly how to receive a problem -- a 22 product, if there was any issues, that 23 they were supposed to call the pharmacy 24 buyer in corporate for anything that</p>	<p style="text-align: right;">Page 44</p> <p>1 first three or four days, all were 2 trained on how to properly use that 3 system, because an associate in pharmacy 4 could be sent to Region 1, for example, 5 for the day or for a few hours if they 6 were short staffed or something. 7 So they are all trained on 8 how to properly put out the lights, short 9 down product, and have you within a 10 three-day time period. 11 Q. What do you mean by short 12 down product? 13 A. Meaning if a picker went to 14 a slot and that particular tote asked for 15 ten and there was nothing stocked in the 16 ten and they -- after they went around to 17 the back, there was nothing there for 18 them and there was only eight, they would 19 short it down to eight and only send 20 eight to the store. So that the store 21 wouldn't be billed for more than what 22 they were getting. 23 Q. Were there ever instances 24 where an associate would go to pick a</p>
<p style="text-align: right;">Page 43</p> <p>1 might have been out of the ordinary as 2 far as not meeting the NDC number or if 3 the quantity that they shipped was 4 different than what was on the packing 5 list. So yeah, there was all that. 6 Q. You mentioned part of the 7 compliance work being that there was no 8 expired product? 9 A. Yes. 10 Q. That's just ensuring that 11 the product isn't past its use by date? 12 A. That's correct, or it's 13 within a certain date of shipping. We 14 never received anything that was short 15 dated more than six months because you 16 didn't know when it was going to go out 17 to the stores. 18 Q. You mentioned using correct 19 picking procedures. What policies and 20 procedures did Rite Aid have in place to 21 ensure correct picking procedures? 22 A. Well all of associates -- 23 the pick-to-light was uniform throughout 24 the whole building. So everybody, in the</p>	<p style="text-align: right;">Page 45</p> <p>1 product and determine that even though 2 there was inventory -- there was 3 sufficient inventory available, that they 4 still were not going to completely fill 5 an order? 6 MR. LAVELLE: Object to 7 form. 8 THE WITNESS: I don't know. 9 Again, the question -- are you 10 talking about building-wide or are 11 you talking about 12 pharmacy-specific or -- 13 BY MR. CLUFF: 14 Q. Pharmacy specific. 15 A. -- or control cage specific? 16 Q. Well, let's -- let's start 17 with pharmacy specific. And I'll -- I'll 18 give you a little more clear explanation 19 kind of using what you described. 20 A. Okay. 21 Q. So let's say an associate is 22 told go -- go pick Product X in the 23 amount of ten. 24 A. Right.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q. And they get there and they 2 look at the order form and they say, 3 well, I can't fill that for ten, I have 4 to fill it for five, did that ever happen 5 in the pharmacy department? 6 A. While I was controlling the 7 pharmacy department, that would not 8 happen. First, the light would light for 9 a certain amount, and we were fortunate 10 during the time that we had -- we had our 11 own pharmacy stockers and drivers. And 12 that's what was good about it, as opposed 13 to the other part of the building, when I 14 said I was the replenishment manager, the 15 front-end departments didn't have unique 16 stockers and drivers. Pharmacy was the 17 only department in that whole building 18 that had it, that's why we had control 19 access into the whole pharmacy area in 20 general, that's legend, and then we had a 21 further access into the control cage. 22 So both places had their own 23 stockers and drivers to ensure that the 24 quality of the product being put in the</p>	<p style="text-align: right;">Page 48</p> <p>1 their proper paperwork. And attach a -- 2 what we called a load ID to that 3 particular item's pallet, whatever 4 quantity it is, could be a whole pallet, 5 a couple cases, what have you, and then 6 another associate would take that, scan 7 that load ID and the system would tell 8 that driver where to locate that product. 9 So the product would be put 10 away into the storage rack or it may go 11 straight to the floor to pick -- to pick, 12 for an associate to send to a store when 13 asked. 14 Q. When the -- the pickers in 15 the -- the control cage, when they 16 received an order did they -- or let me 17 ask you a foundational question. 18 Are you aware if Rite Aid 19 had thresholds for its stores related to 20 controlled substance products? 21 A. There were thresholds 22 established throughout certain items when 23 it got -- were sent out a certain 24 quantity, no more than.</p>
<p style="text-align: right;">Page 47</p> <p>1 slots was correct. And that means 2 inventory, dating and all that. 3 So getting back to your 4 question, if somebody wanted -- needed 5 ten and there was only five, our 6 department was controlled enough that we 7 had leads and managers that would go look 8 for that product. If it wasn't there, 9 we'd go to the storage location and pull 10 that product to satisfy the store's 11 needs. And only if there was none left 12 in pharmacy would we short it down. 13 Q. Okay. And let's talk about 14 the controls now. And I -- 15 A. It would have been the same 16 procedure for them. 17 Q. Let me ask you a question 18 then. 19 So what was the normal 20 procedure for receiving an order from a 21 store for controlled substances? 22 A. Again, the inbound receiving 23 clerk would receive the product. Write 24 down exactly what they had. Fill out</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. What's your understanding of 2 a threshold? 3 A. Threshold is that an 4 order -- a store should not order more 5 than their established threshold. And we 6 would not send more than what the 7 established threshold was. 8 Q. Do you have an understanding 9 of how the thresholds that you've 10 described were set at Rite Aid? 11 A. I'm familiar with how it was 12 set. 13 Q. Can you describe how they 14 were set? 15 A. Janet Hart's team in 16 corporate would establish thresholds 17 based on sales of stores of certain 18 items. 19 Q. Did you have any 20 participation in the establishment of 21 thresholds? 22 A. No. 23 Q. How do you understand that 24 Janet Hart's team set the thresholds?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. They would communicate that 2 to us. 3 Q. You said that thresholds 4 were established throughout certain items 5 and that that would result in only a 6 certain quantity being sent out, no more 7 than that. Is that -- is that your 8 understanding? 9 MR. LAVELLE: Object to 10 form. 11 THE WITNESS: Yes. 12 BY MR. CLUFF: 13 Q. When you say certain items, 14 are you referring to specific controlled 15 substances or some other products, do you 16 know? 17 A. I'm only talking about the 18 control items in the control cage. 19 Q. Okay. Previously we talked 20 about hydrocodone products. Were there 21 thresholds for hydrocodone products? 22 A. Yes. 23 Q. The pickers in the control 24 cage, did they have visibility into what</p>	<p style="text-align: right;">Page 52</p> <p>1 picked into, to go to different bays or 2 zones or slots. And as they scan the 3 tote's ID, now that tote ID belongs to a 4 store. So that store wants X amount of 5 quantity dependent on what locations 6 items are. 7 So an associate would walk 8 to a location and might have eight. So 9 they would put eight into the tote, 10 extinguish the -- the light, and go to 11 see if there's another location for that 12 store. 13 They might have only wanted 14 one item. They might want a couple 15 items. So they would go or push that 16 tote to the next zone to satisfy that 17 order. 18 We have another associate, 19 what we call the paperwork person, that 20 would print all the pick list IDs, what 21 we call green bar, which lists on 22 hardcopy all of the items that the store 23 ordered for that order. They would match 24 that item numbers and tote number with</p>
<p style="text-align: right;">Page 51</p> <p>1 the thresholds were for the hydrocodone 2 products? 3 A. We had posted certain items 4 that stores habitually ordered a lot. 5 They would be posted throughout the 6 picking area for them not to exceed and 7 to report any excess -- any orders that 8 were above that amount to a lead or a 9 manager. 10 Q. So if you can help me walk 11 through the process. Let's -- let's go 12 back to the order picker in the control 13 cage. 14 So they receive a list of 15 items that they should be picking, 16 correct? 17 A. No. 18 Q. No. Okay. How does it work 19 for them then? 20 A. We had different people 21 doing different things. 22 Q. Okay. 23 A. You had pickers that would 24 pull a tote, which the items would be</p>	<p style="text-align: right;">Page 53</p> <p>1 the tote, and put that into the tote. 2 And it would also print a shipping label 3 to be placed on the lid of the tote after 4 matching the tote ID so that the 5 store's -- correct store was put on the 6 tote ID, matched the tote ID number, the 7 pick list that was supposed to -- that 8 matched the product that was in the tote 9 was in the tote, and then once the 10 picking was done, that tote would be 11 100 percent audited at one of our 12 auditing tables. Each and every tote in 13 the control cage was 100 percent audited. 14 Q. So it sounds like there 15 maybe are two stages in the packing 16 process. The first is with the 17 associates that are actually taking the 18 totes and filling them using the 19 pack-light system, correct? 20 MR. LAVELLE: Object to 21 form. 22 THE WITNESS: Yes. 23 BY MR. CLUFF: 24 Q. Okay. So those associates</p>

<p style="text-align: right;">Page 54</p> <p>1 that are -- are filling totes using the 2 pack-light system, they don't have a list 3 of what items are being ordered for that 4 tote?</p> <p>5 MR. LAVELLE: Object to 6 form.</p> <p>7 THE WITNESS: No. They 8 have, throughout the -- the 9 department we have a threshold of 10 no more than 5,000 units go to -- 11 pills or units go to any 12 particular store. So if they went 13 to a location and let's say it had 14 bottles of 500 pills in it, and 15 the thing lit up. I don't know, 16 let's try to do the math. 500, 17 that would be 10. If it's like 18 11, they would not send -- put 11 19 in the tote. They would only put 20 10.</p> <p>21 BY MR. CLUFF: 22 Q. Okay. I see you understand 23 kind of where I'm heading, kind of 24 understand what the -- the process is.</p>	<p style="text-align: right;">Page 56</p> <p>1 sure, to avoid any mispicking even though 2 we did 100 percent audit, that an item 3 would be located that's not side by side. 4 In other words, you would not have a 5 package of 500-pill bottles next to a 6 package of 100-pill bottles, because if 7 somebody looked at the light, they could 8 mispick it and grab this by -- this many 9 by mistake, whatever. We purposely 10 separated them so those kind of errors 11 wouldn't happen.</p> <p>12 So then once that happened, 13 it goes to our audit table and then they 14 show everything that the store was 15 supposed to have ordered and what was 16 actually picked in the tote. And 17 sometimes those were incorrect as well. 18 The store might have wanted only eight, 19 but the light might have lit up seven or 20 something. So they would have to have 21 one more added to it. But we'd call the 22 stores first. Or if it lit up, they only 23 wanted 9, it could have loaded up 10. 24 The order sheet would say whether it was</p>
<p style="text-align: right;">Page 55</p> <p>1 So a tote picker would go to 2 a part of the store where the light lit 3 up, and let's say that light was for 4 hydrocodone products. And we'll use your 5 example of a 500-pill bottle. And let's 6 say the request was for 11, as you 7 suggested.</p> <p>8 How would the -- the Rite 9 Aid associate who was filling the tote 10 know not to fill for more than 5,000 11 units?</p> <p>12 MR. LAVELLE: Object to 13 form.</p> <p>14 THE WITNESS: Because that 15 would be -- that would be the 16 threshold.</p> <p>17 BY MR. CLUFF: 18 Q. Okay. How did the associate 19 know that that was the threshold? 20 A. Because we had them 21 typewritten, no more than 10 of 500 22 bottles, no more of five, 100 bottles. 23 Because different items come in different 24 packaging at different times. So we made</p>	<p style="text-align: right;">Page 57</p> <p>1 9 and we'd put the product back. 2 And then any associate that 3 made an error got a corrective action.</p> <p>4 Q. I want to stay with this 5 like, first phase which is the tote, the 6 tote filling --</p> <p>7 A. Okay.</p> <p>8 Q. -- the picking to fill the 9 totes.</p> <p>10 A. Mm-hmm.</p> <p>11 Q. I asked how the -- the 12 associates knew that there was a 13 5,000-unit threshold. And you said that 14 we have them typewritten?</p> <p>15 A. Yes.</p> <p>16 Q. Earlier you mentioned that 17 there was something posted in the control 18 cage. Is the typewritten thing you 19 mentioned the same as the thing you 20 mentioned that was posted?</p> <p>21 MR. LAVELLE: Object to 22 form.</p> <p>23 THE WITNESS: No. Because I 24 think --</p>

<p style="text-align: right;">Page 58</p> <p>1 BY MR. CLUFF:</p> <p>2 Q. Hold on, let's -- let's --</p> <p>3 let's do it so I don't lose track. What</p> <p>4 is the typewritten information that you</p> <p>5 were talking about?</p> <p>6 A. The item, the threshold</p> <p>7 items were typewritten and posted for the</p> <p>8 number of items that we had. And they</p> <p>9 were -- the font was like 36-inch font --</p> <p>10 font, posted in the control cage, for</p> <p>11 certain stores could only get this amount</p> <p>12 or might be able to get this amount.</p> <p>13 The typewritten list that</p> <p>14 I'm referring to is called a pick list ID</p> <p>15 which is downloaded automatically through</p> <p>16 the order system which shows everything</p> <p>17 that a store ordered, and then when we</p> <p>18 did a tote audit, when we would count how</p> <p>19 many items, we'd indicate individually</p> <p>20 how many items the store was actually</p> <p>21 getting into that tote.</p> <p>22 Q. Okay. So there was --</p> <p>23 A. That stayed -- that stayed</p> <p>24 with the tote to the store, so when the</p>	<p style="text-align: right;">Page 60</p> <p>1 are talking about hydrocodone products,</p> <p>2 that would have been included on this</p> <p>3 posted document?</p> <p>4 A. If they had a threshold</p> <p>5 established, yes.</p> <p>6 Q. Do you know if there was a</p> <p>7 threshold for hydrocodone products?</p> <p>8 A. I don't remember.</p> <p>9 Q. Do you remember which</p> <p>10 products were subject to a 5,000 unit</p> <p>11 threshold?</p> <p>12 A. All the products in here</p> <p>13 except pseudoephedrine. They were only</p> <p>14 24.</p> <p>15 Q. So all product in the</p> <p>16 control cages were subject to a</p> <p>17 5,000-unit threshold?</p> <p>18 A. No more than 5,000 units.</p> <p>19 Q. So as a pick -- as a picking</p> <p>20 associate who would fill the totes went</p> <p>21 through, if they saw that a store's pick</p> <p>22 list ID called for an order that would</p> <p>23 exceed the 5,000-unit threshold, what</p> <p>24 happened?</p>
<p style="text-align: right;">Page 59</p> <p>1 pharmacist got it or whoever checked in</p> <p>2 that tote at the store would have that</p> <p>3 packing list to verify exactly what we</p> <p>4 said we sent them they were getting.</p> <p>5 Q. So there was a pick list ID</p> <p>6 that moved with the tote --</p> <p>7 A. Correct.</p> <p>8 Q. -- as it was filled?</p> <p>9 A. Yes.</p> <p>10 Q. Understood.</p> <p>11 MR. LAVELLE: Please wait</p> <p>12 until the question is finished</p> <p>13 before you answer.</p> <p>14 THE WITNESS: Thank you.</p> <p>15 BY MR. CLUFF:</p> <p>16 Q. Okay. And then there was</p> <p>17 also a posted document that you said for</p> <p>18 the products that -- the thresholds that</p> <p>19 explained what the thresholds were?</p> <p>20 A. Yes.</p> <p>21 Q. Am I understanding that</p> <p>22 correctly?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So for example, if we</p>	<p style="text-align: right;">Page 61</p> <p>1 A. They, one, would not send</p> <p>2 them. They would short it to an amount</p> <p>3 below that. They would let either a lead</p> <p>4 or an assistant manager know that the</p> <p>5 store exceeded the amount allowed. And</p> <p>6 then that lead or assistant manager would</p> <p>7 place a phone call to the store -- we</p> <p>8 used a phone log -- to mention to the</p> <p>9 store, "Do you realize that you ordered</p> <p>10 this," or whatever the conversation was.</p> <p>11 But they were only going to get the</p> <p>12 allowable amount.</p> <p>13 Q. So when the picking</p> <p>14 associate is going through filling the</p> <p>15 tote, how would he or she know that an</p> <p>16 order that they were looking at was going</p> <p>17 to go over this 5,000-unit threshold?</p> <p>18 A. Well, they use math, like</p> <p>19 the rest of us. I mean, if you're only</p> <p>20 allowed 5,000 and you have a package of</p> <p>21 five bottles, you're not going to send</p> <p>22 more than ten -- if the light lights up</p> <p>23 at 11, you're only going to send ten.</p> <p>24 The --</p>

Page 62

1 Q. Sorry. I didn't mean to
2 interrupt you. Go ahead.
3 The 5,000-unit threshold,
4 was that per week or per month? Do you
5 know?
6 A. I believe it was for per
7 order.
8 Q. What would happen if a store
9 had two orders during a one-week period
10 that were both for the max of 5,000
11 units?
12 A. Corporate would have had to
13 approve that order to -- that store to do
14 another order, or the point of sale in
15 the store might have been that they've
16 sold that based on the scripts.
17 Q. And would that -- would that
18 order then have then been approved and
19 shipped?
20 MR. LAVELLE: Object to
21 form.
22 THE WITNESS: The only
23 orders approved would have been if
24 corporate allowed it for them to

Page 63

1 order a second -- second amount.
2 BY MR. CLUFF:
3 Q. You say if the picking
4 associates saw an order that was over the
5 5,000-unit number they would have shorted
6 that order; is that correct?
7 A. Yes.
8 Q. And then they would have
9 informed their lead or assistant manager
10 of the over-order, essentially?
11 A. Yes.
12 Q. Do you know who the
13 people -- those leads or assistant
14 managers would have been between 2003 and
15 2014?
16 MR. LAVELLE: Object to
17 form.
18 THE WITNESS: You mean, like
19 names?
20 BY MR. CLUFF:
21 Q. Yeah.
22 A. I could come up -- I could
23 remember some names, not all names.
24 Q. Do you remember -- which

Page 64

1 names do you remember?
2 A. Marian Wood.
3 Q. Anybody else?
4 A. Kim Brown, Linda Stewart,
5 Debra Chase. That's all I can recall
6 right now. A lot of them left the
7 company since that time.
8 Q. You said that when those
9 leads, those assistant managers received
10 a report of an order that went over the
11 5,000 units, they would -- they would
12 call the store; is that accurate?
13 A. They would attempt to call
14 the store to verify their order, let them
15 know that their order exceeded it and
16 they were only going to get a certain
17 amount.
18 Q. What was the purpose of that
19 phone call to the store?
20 A. Well, so that the store knew
21 that they were only getting a certain
22 amount, that the order exceeded what the
23 authorized amount was to send to them,
24 and that -- we would let corporate know

Page 65

1 that they exceeded that amount.
2 And sometimes the stores
3 might have a new tech or something like
4 that, they could have mis-ordered it in
5 the first place. But let the pharmacist
6 know if someone might have -- someone
7 might have made a mistake.
8 Q. You mentioned that you would
9 let corporate know that the store
10 exceeded that amount. Is that a
11 different phone call than the call to the
12 store?
13 A. Yes. Because if a store,
14 when we called the resolution, and they
15 said, oh, well we meant to say eight and
16 we said 18, we wouldn't use that call to
17 corporate on it. But if the store
18 constantly made the same mistake over and
19 over, it may indicate maybe they weren't
20 trained or something like that. So we
21 wanted to make sure corporate would know.
22 Q. That was essentially a
23 quality control call to corporate to let
24 them know how the store was performing?

<p style="text-align: right;">Page 66</p> <p>1 MR. LAVELLE: Object to 2 form. 3 THE WITNESS: Yes. 4 BY MR. CLUFF: 5 Q. What if an order came in at 6 the end of the day while a pharmacy or 7 store was closed, would you call that 8 store or how would you deal with that? 9 MR. LAVELLE: Object to 10 form. 11 THE WITNESS: What do you 12 mean come in at the end of the day 13 when the store is closed? We had 14 a day shift and a night shift. So 15 the orders are point of sale. 16 They come down through the system. 17 Night shift picks them. And we 18 pick them during days. That 19 wouldn't coincide with a pharmacy 20 being closed or anything. 21 If we couldn't get ahold of 22 the store, we would set that aside 23 and let the day shift DEA 24 coordinator or manager attempt to</p>	<p style="text-align: right;">Page 68</p> <p>1 humidifier monitoring machines throughout 2 the whole pharmacy and control cage area. 3 Q. How about security? Were 4 you responsible for physical security of 5 the products at the Perryman center? 6 MR. LAVELLE: Object to 7 form. 8 THE WITNESS: I was 9 responsible to make sure that we 10 had the correct facility -- 11 security items in place. The 12 engineer make sure that the 13 control cage was built to standard 14 and the DEA approved everything 15 that we have in the facility. 16 BY MR. CLUFF: 17 Q. One more follow-up for you 18 about the thresholds and the calls that 19 were placed about order changes. You 20 mentioned that there would be calls to 21 corporate to let them know how a store 22 was ordering. Do you recall that? 23 A. Yes. 24 Q. Do you know if there are any</p>
<p style="text-align: right;">Page 67</p> <p>1 call the store if the store was 2 not open. 3 BY MR. CLUFF: 4 Q. Going back to the overall 5 compliance duties that you discussed 6 earlier. You mentioned ensuring that all 7 of the products at the distribution 8 center were stored properly. Do you 9 recall that? 10 A. Yes. 11 Q. What responsibility did you 12 have for ensuring that Rite Aid's 13 products at Perryman were stored 14 properly? 15 A. Temperature controlled 16 environment. The whole pharmacy 17 department was temperature controlled, 18 sort of like an air conditioner. They 19 all had to be stored in required 20 temperatures, 77 degrees, and that their 21 humidity was at such a level that was 22 acceptable throughout the summer months 23 and throughout the year. And we had 24 numerous temperature recording and</p>	<p style="text-align: right;">Page 69</p> <p>1 records or summaries of those phone 2 calls? 3 A. We have records of what we 4 call the phone control log, where if an 5 associate thought the order was incorrect 6 for the store, that we'd write down the 7 store number, the quantity of the order, 8 and that we would call an associate who 9 we talked to, and a resolution. 10 Very rarely did we ever have 11 to -- and I don't even know if we ever 12 had to call corporate on a store going 13 out of pattern or ordering constantly 14 more than they were supposed to. But 15 that was a procedure in place. 16 Q. So this -- did you say full 17 control log or phone control log? 18 A. Phone. 19 MR. CLUFF: If we can get 20 that cleaned up on the record 21 after. Okay. Thanks. 22 BY MR. CLUFF: 23 Q. So this phone control log, 24 that would be a record of the calls, for</p>

Page 70

1 example, to the stores when they went
2 over the 5,000-unit number?
3 A. Or it could be below that
4 they normally ordered. Some stores were
5 weekly deliveries. Some were biweekly.
6 And these associates, very few -- hardly
7 any turnover. So they knew stores that
8 we -- whether it was from West Virginia
9 whatever, certain patterns that the
10 stores always ordered this or that.
11 So if they were a biweekly
12 store and they ordered less than what
13 they normally order, we'd put that in
14 there and call them as well too to make
15 sure, "Hey, you ordered 13. You ordered
16 15. Is this a correct order?"
17 So there was a familiarity
18 with us and the store relationship
19 developing.
20 Q. And the people who were
21 making those calls, that was the leads
22 and managers, correct?
23 A. Yes.
24 Q. And so there's a log of all

Page 71

1 of those phone calls that occurred?
2 A. There are numerous logs
3 throughout the years of those phone
4 calls.
5 Q. So I was asking about the
6 calls to corporate about the stores to
7 see if there was a log of those calls
8 separate from this phone call log that
9 you just described.
10 Is there one?
11 MR. LAVELLE: Object to
12 form.
13 THE WITNESS: I don't recall
14 if there was a log for that or
15 not. I think we would -- Marian
16 or somebody closer to it would
17 call corporate if we noticed that
18 a store ordered more than they
19 were supposed to. And the store
20 would have -- might have responded
21 to Marian or whoever called, well,
22 we need this because of the sales.
23 Marian might have called Janet
24 Hart and said hey, this store said

Page 72

1 that this quantity is not enough,
2 and then it would be up to Janet
3 Hart to make -- or her group to
4 determine whether, well, based on
5 sales maybe it should be increased
6 or no, it's not.
7 But they were the approval
8 authority for any kind of
9 thresholds or amounts shipped to
10 the stores.
11 BY MR. CLUFF:
12 Q. You said based on sales
13 maybe it should be increased or no. When
14 you say sales, do you mean the amount of
15 drugs that a Rite Aid store was
16 dispensing?
17 A. Based on the sales of how
18 many scripts the stores had, I guess at
19 that time for what they were -- the
20 patients they had. I mean I don't know
21 what all the metrics that Janet Hart and
22 them used for that. I only know it's
23 based on point of sales that the store
24 was using.

Page 73

1 Q. So your understanding is
2 that -- that sales information was used
3 to understand whether a threshold should
4 be increased?
5 MR. LAVELLE: Object to
6 form.
7 THE WITNESS: As I
8 understand it, it might have been
9 part of it.
10 BY MR. CLUFF:
11 Q. You -- you mentioned that
12 you almost never called corporate about a
13 store that was ordering over its
14 threshold, was that -- did I get that
15 right?
16 MR. LAVELLE: Object to
17 form.
18 THE WITNESS: I can't recall
19 a store -- I mean corporate being
20 called for that reason.
21 BY MR. CLUFF:
22 Q. Do you recall corporate
23 being called for any other reason?
24 MR. LAVELLE: Object to

Page 74

1 form.
2 THE WITNESS: I don't
3 recall. Again, I'm not physically
4 working in the control cage
5 24 hours. Those are the people
6 that work there, the assistant
7 managers and the leads, and the
8 DEA coordinator.
9 BY MR. CLUFF:
10 Q. So if we wanted to talk to
11 somebody about how often corporate was
12 called, it would be the leads or the
13 managers who were working in the cage?
14 A. Or the DEA coordinator,
15 correct.
16 Q. Are you aware if corporate
17 ever took action on a store that was
18 consistently ordering above its
19 threshold?
20 A. I'm not aware of that.
21 Q. Are you aware if corporate
22 ever took any action on a store that was
23 ordering consistently under its
24 threshold?

Page 75

1 A. Again, not being corporate,
2 I don't know, I'm not aware of what they
3 did or did not do.
4 Q. And you were -- when you
5 refer to corporate, is there a person
6 you're referring to at corporate who
7 would have been aware of that
8 information?
9 A. Janet Hart.
10 Q. Anybody else?
11 A. No, that I'm aware of.
12 Q. Okay. I want to go back to
13 the storage issues we were talking about.
14 We've been going about an hour. I
15 propose that we talk about this physical
16 security stuff for a second, and then we
17 can take a break, if that's all right
18 with you?
19 A. I'm fine.
20 Q. So going back to the
21 physical security. You talked about
22 the -- the cages and making sure they
23 were built to the DEA's specs, do you
24 recall that?

Page 76

1 A. Yes.
2 Q. Okay. Were you in charge of
3 ensuring that the -- the cage
4 construction complied with DEA
5 regulations?
6 A. I was a manager in charge
7 that the DEA would only approve certain
8 cage construction. The industrial
9 engineer on site would have been the
10 person that contracted the people to
11 build the cage to the DEA specifications,
12 and then DEA would come out, which they
13 did when we expanded the cage, to ensure
14 that it met their compliance. The -- the
15 metal gauge on the fence, and that they
16 were close, and all of that.
17 Q. So the -- the engineer would
18 have been responsible for building the
19 cage as -- as you stated, correct?
20 A. He would have been
21 responsible for hiring the contractors to
22 build the cage to the specifications to
23 DEA, correct.
24 Q. Are you aware that in

Page 77

1 order -- do you have any understanding
2 about whether or not Rite Aid was
3 required to obtain a registration from
4 the DEA to distribute controlled
5 substances?
6 MR. LAVELLE: Object to
7 form.
8 THE WITNESS: Yes, we always
9 have had that.
10 BY MR. CLUFF:
11 Q. Are you aware whether Rite
12 Aid as a registrant was required to
13 provide effective controls against
14 diversion?
15 A. Yes. We always had
16 effective controls against diversion.
17 Q. What's your understanding of
18 what diversion is?
19 A. Diversion is any theft,
20 misappropriation, misuse of any pharmacy
21 items, which includes control drugs.
22 Not in -- we had procedures, a lot of
23 procedures in place to make sure that
24 didn't happen. We had SOPs where each

<p style="text-align: right;">Page 78</p> <p>1 associate taking out the trash had to 2 have a lead or a manager inspect for any 3 loose bottles that might have fallen into 4 the trash or got caught up in the -- in 5 the plastic before throwing it away on 6 the conveyor line. Any instances of 7 bottles on -- on the floor, we reported 8 that to the leads and managers. Because 9 humans being humans, you pick something 10 up and drop it and then continue and not 11 really realize that you dropped it, or 12 what have you.</p> <p>13 And we were real good at 14 that, because we, at the end of every 15 day, which we -- there's no requirement 16 anywhere, for both shifts, did a forward 17 pick inventory for everything. And we 18 weren't really -- we're not required to 19 do it. There's nothing in the federal 20 regulations for that. They don't require 21 biennial inventory or a annual inventory. 22 We did it daily, the forward picks.</p> <p>23 Q. What's a forward pick 24 inventory?</p>	<p style="text-align: right;">Page 80</p> <p>1 That includes the shipping 2 department as well. I mean, you 3 ship it, that's why I said when I 4 was in charge of the outbound 5 department, we were only delivered 6 control drugs, and it's strapped, 7 tote-tied, red totes to the 8 outbound shipping areas whether it 9 was to a crosswalk DC or to our 10 local stores, in an approved cage 11 that only trained associates, in 12 those cages in the outbound 13 department, would sign those totes 14 out to the truck right before it 15 was ready to depart for the 16 stores.</p> <p>17 BY MR. CLUFF: 18 Q. Are you aware of what a 19 suspicious order is? 20 A. Yes. 21 Q. What's your understanding of 22 the term "suspicious order"? 23 A. Suspicious order would have 24 been, in my estimation, a gross amount of</p>
<p style="text-align: right;">Page 79</p> <p>1 A. I mean if we go back to what 2 I explained to you what a forward pick 3 was, that's what the -- where the product 4 is, where the associates pick the product 5 out of the boxes and put in the totes. 6 Well, forward pick inventory is we 7 inventory every one of those pick slots 8 at the end of each shift to make sure 9 that it matches up, the system inventory 10 for it.</p> <p>11 Then monthly we did storage 12 inventories as well.</p> <p>13 Q. When I asked you what your 14 understanding of diversion is, you said 15 that it was any theft, misappropriation, 16 misuse of any pharmacy items including 17 drugs.</p> <p>18 Are you aware of any other 19 kind of diversion that Rite Aid was 20 required to prevent? 21 MR. LAVELLE: Object to 22 form. 23 THE WITNESS: Well, 24 over-ordering, excessive orders.</p>	<p style="text-align: right;">Page 81</p> <p>1 orders that the store, through -- break 2 its pattern, ordered more than it 3 normally does, a large amount above it, 4 or it could be less than, as far as that 5 goes as well. And it does not -- it's 6 just not in sync of what a normal store 7 would have -- would do when they place an 8 order.</p> <p>9 Q. During your time as a 10 manager from 2003 to 2014, are you aware 11 of any suspicious orders being reported 12 by Rite Aid to the DEA? 13 A. No, I'm not aware -- aware 14 of any of that. 15 Q. Is that because it never 16 occurred? 17 MR. LAVELLE: Object to 18 form. 19 THE WITNESS: From my -- 20 from my distribution center it 21 never occurred. 22 BY MR. CLUFF: 23 Q. And when you say from your 24 distribution center it never occurred, do</p>

Page 82

1 you mean that your distribution center
2 never reported a suspicious order to the
3 DEA?
4 A. Yes.
5 Q. Are you aware of any
6 investigations of potentially suspicious
7 orders during the time period you were
8 the manager at Perryman between 2003 and
9 2014?
10 MR. LAVELLE: Object to
11 form.
12 THE WITNESS: Are you
13 referring to investigations of the
14 Perryman distribution center?
15 BY MR. CLUFF:
16 Q. No. My question was a
17 little more specific.
18 So are you aware, at
19 Perryman, if there was ever an
20 investigation about a potentially
21 suspicious order between 2003 and 2014?
22 MR. LAVELLE: Object to
23 form.
24 THE WITNESS: No, I'm not

Page 83

1 aware of that.
2 BY MR. CLUFF:
3 Q. Is that because no
4 investigations were ever conducted?
5 MR. LAVELLE: Object to
6 form.
7 THE WITNESS: I'm not aware
8 of any investigation.
9 BY MR. CLUFF:
10 Q. You used the term earlier
11 "excessive ordering." What does that
12 term mean to you?
13 A. Excessive ordering means
14 that a store is ordering a quantity that
15 they are not allowed to on a consistent
16 pattern over and over again. And that
17 looks suspicious, that it's not in their
18 character based on our dealings with
19 them.
20 Q. So excessive ordering in
21 your opinion looked suspicious?
22 MR. LAVELLE: Object to
23 form.
24 THE WITNESS: What -- what's

Page 84

1 the question? Excessive ordering
2 looks suspicious, is that what the
3 question is?
4 BY MR. CLUFF:
5 Q. Yeah. Here is what you
6 said: You said excessive ordering means
7 that a store is ordering a quantity that
8 they are not allowed to on a consistent
9 basis, and it looks suspicious.
10 So my question is, to just
11 understand your answer that, that to you,
12 excessive ordering looked suspicious?
13 MR. LAVELLE: Object to
14 form.
15 THE WITNESS: Well, I hope
16 we're not getting confused with
17 above the threshold. Because a
18 store may order above threshold,
19 but that doesn't mean that it's,
20 in my opinion, a suspicious order.
21 It could be just a mistake.
22 BY MR. CLUFF:
23 Q. Yeah, is that -- I'm sorry,
24 I didn't mean to talk over you.

Page 85

1 That -- that was not my
2 question. My question was really just
3 based on -- on the answer you just gave,
4 which is that excessive ordering was a
5 pattern of a store consistently ordering
6 more than that it was allowed to, and
7 then I believe you said that that looks
8 suspicious. So is it --
9 A. It -- it could be
10 suspicious --
11 MR. LAVELLE: Object to
12 form. Wait till the question is
13 finished before you answer it,
14 sir.
15 BY MR. CLUFF:
16 Q. And always make sure you
17 give your counsel an opportunity to
18 object.
19 But to go back to this
20 question that I had earlier about
21 excessive ordering.
22 A. Mm-hmm.
23 Q. I asked you, you know, what
24 your understanding of excessive ordering

<p style="text-align: right;">Page 86</p> <p>1 was. Do you recall that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And then we were</p> <p>4 looking -- I was looking at your answer</p> <p>5 on realtime. We have a feed of the</p> <p>6 transcript that comes out, so I was kind</p> <p>7 of looking at what was transcribed of</p> <p>8 your answer.</p> <p>9 And you said that excessive</p> <p>10 ordering was a store ordering over the</p> <p>11 quantity consistently that they are</p> <p>12 allowed to. Is that how you understood</p> <p>13 excessive ordering patterns?</p> <p>14 MR. LAVELLE: Object to</p> <p>15 form.</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MR. CLUFF:</p> <p>18 Q. And to you, was an excessive</p> <p>19 ordering pattern, was that suspicious?</p> <p>20 MR. LAVELLE: Object to</p> <p>21 form.</p> <p>22 THE WITNESS: What -- what</p> <p>23 is the question, to me an</p> <p>24 excessive ordering is suspicious,</p>	<p style="text-align: right;">Page 88</p> <p>1 pick list IDs, all of our postings, our</p> <p>2 control logs, how we audited 100 percent</p> <p>3 of our totes. And they were very, very</p> <p>4 happy with the way we had our controls in</p> <p>5 place, and they wished other places did</p> <p>6 the same thing we did.</p> <p>7 And they didn't see -- we</p> <p>8 showed them the phone logs. They said</p> <p>9 you know, this is fine, you're keeping</p> <p>10 track of anything. And nothing looked</p> <p>11 out of place to them. That was the</p> <p>12 second of four audits they had of our</p> <p>13 facility.</p> <p>14 Q. When that DEA audit</p> <p>15 occurred, did you tell them that you had</p> <p>16 never reported a suspicious order from</p> <p>17 the Perryman center?</p> <p>18 A. I don't recall that.</p> <p>19 MR. CLUFF: Let's take a</p> <p>20 little bit of a break.</p> <p>21 THE WITNESS: Sure.</p> <p>22 MR. CLUFF: Maybe just five,</p> <p>23 ten minutes.</p> <p>24 THE VIDEOGRAPHER: Off the</p>
<p style="text-align: right;">Page 87</p> <p>1 is that what you said?</p> <p>2 BY MR. CLUFF:</p> <p>3 Q. An excessive ordering</p> <p>4 pattern in your experience as a manager</p> <p>5 from 2003 to 2014, did you believe that</p> <p>6 was suspicious?</p> <p>7 MR. LAVELLE: Object to</p> <p>8 form.</p> <p>9 THE WITNESS: Well, we</p> <p>10 didn't have an instance, what you</p> <p>11 just said.</p> <p>12 BY MR. CLUFF:</p> <p>13 Q. What do you mean you didn't</p> <p>14 have that instance?</p> <p>15 A. You said as a manager, based</p> <p>16 on my experience, would excessive</p> <p>17 ordering be suspicious. Well, we didn't</p> <p>18 have that pattern of excessive ordering.</p> <p>19 And as a matter of fact, when we had the</p> <p>20 DEA audit back in 2012, they were real</p> <p>21 happy with our excessive ordering</p> <p>22 monitoring system. They walked through</p> <p>23 the whole cage because they spent all day</p> <p>24 there looking at how we picked all of our</p>	<p style="text-align: right;">Page 89</p> <p>1 record, 10:39 a.m.</p> <p>2 (Short break.)</p> <p>3 THE VIDEOGRAPHER: We are</p> <p>4 back on the record at 10:59 a.m.</p> <p>5 BY MR. CLUFF:</p> <p>6 Q. Okay. Mr. Frost, we're back</p> <p>7 on the record, so you are under oath</p> <p>8 again.</p> <p>9 Before we broke we were</p> <p>10 talking about excessive ordering</p> <p>11 patterns. Do you recall that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And you talked about</p> <p>14 there were these, what you referred to as</p> <p>15 phone call logs about orders from Rite</p> <p>16 Aid stores that were -- were over the</p> <p>17 5,000-unit mark. Do you recall that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know if those --</p> <p>20 those call logs were also referred to as</p> <p>21 above average order call logs?</p> <p>22 A. No. I don't know if they</p> <p>23 were referred to that at all, like that.</p> <p>24 Q. Were they ever referred to</p>

Page 90

1 as excessive order logs?
2 A. Yes.
3 Q. How about threshold logs?
4 A. Yeah. Same thing.
5 Q. So if we -- if we looked at
6 one of those, those logs, that would be a
7 record of calls that were made about
8 orders that were deemed to be excessive?
9 MR. LAVELLE: Object to
10 form.
11 THE WITNESS: Above the
12 order threshold.
13 BY MR. CLUFF:
14 Q. And then also excessive,
15 because they were above the order
16 threshold?
17 A. Yeah, that's excessive,
18 above the threshold, more than required.
19 Q. Yeah. But none of those
20 orders would have been reported to the
21 DEA, right?
22 A. No.
23 Q. So as part of the litigation
24 Rite Aid produced a copy of what has been

Page 91

1 referred to as personnel files. So I
2 have a copy here today that I'd like to
3 kind of walk through with you, and the
4 way that this works is that I put a
5 sticker on the copy that I give to you to
6 mark it as an exhibit number.
7 So I'm going to put that, so
8 that I don't mess up any of the text, I'm
9 going to put that at the top here. We're
10 going to mark that Frost Exhibit 1. So
11 I'm going to hand you that. And then
12 later today if I end up referring back to
13 this document, I'll refer to it as
14 Exhibit 1. Does that make sense?
15 A. Sure.
16 (Document marked for
17 identification as Exhibit
18 Rite Aid-Frost-1.)
19 BY MR. CLUFF:
20 Q. Okay. So I don't know if
21 you've ever seen that before. I have
22 some questions about it that I want to go
23 through with you.
24 You're free to familiarize

Page 92

1 yourself with it. So if you'd like to do
2 that for a minute, go ahead. If you want
3 me to just proceed with my questions, you
4 just let me know.
5 MS. FREEL: Could you please
6 state the Bates number for the
7 record.
8 MR. CLUFF: Yeah. That was
9 really loud. The Bates number
10 Rite_Aid_OMDL_0050596. It's a
11 30-page -- wait. Maybe I started
12 it one page short.
13 Yeah, 50596. And the last
14 page ends at 50625.
15 BY MR. CLUFF:
16 Q. Did you take a moment to
17 familiarize yourself with that,
18 Mr. Frost?
19 A. Yes.
20 Q. To start I want to ask some
21 background information about what kind of
22 information it appears is in the
23 personnel file. If you look at the first
24 page, at the very top left corner it says

Page 93

1 "performance management."
2 Do you see that?
3 A. I do.
4 Q. Looking at this page of the
5 document in the center, it also says,
6 "Annual performance review, FY 2014."
7 Do you see that?
8 A. I do.
9 Q. While you've been employed
10 at Rite Aid, did you receive yearly
11 performance reviews?
12 A. Yes.
13 Q. Would you have received one
14 for every year that you've been employed
15 at Rite Aid?
16 A. Yes.
17 Q. Okay. Moving down into the
18 middle of the page, it looks like it
19 says, "DC salary competencies."
20 Do you see that? It's the
21 last line of text just before the chart
22 begins.
23 Just to give you a little
24 bit of heads-up. There's a screen here

<p style="text-align: right;">Page 94</p> <p>1 in front of your counsel to your left. 2 We've got an electronic document -- 3 A. Okay. Okay. 4 Q. -- that you're looking at. 5 And so sometimes I might refer to 6 information on the page. And Zach, who's 7 our trial tech, will highlight that 8 information. So it can kind of help you 9 follow along if my instructions are not 10 more clear. 11 But do you see where it says 12 salary competencies there? 13 A. Sure do. 14 Q. Okay. Do you know what a DC 15 salary competency is? 16 A. Yes. 17 Q. What is it? 18 A. It's a competency of all 19 managerial positions. 20 Q. Okay. And then if you look 21 immediately under that, there's a 22 heading, column heading that says 23 "self-assessment"? 24 A. Yes.</p>	<p style="text-align: right;">Page 96</p> <p>1 supervisor? 2 A. Before -- before the 3 assessment? Before his assessment? 4 Q. At any time before you both 5 signed it. 6 A. During the annual review 7 process, we might have. 8 Q. During the annual review 9 process, would you have discussed your 10 supervisor's assessment? 11 A. Yes. 12 Q. So my question, I guess, 13 leads up to, during the annual review 14 process, both you and your supervisor 15 would have had a chance to review this 16 document before it was signed, correct? 17 A. Yes. 18 Q. I want to go to the next 19 page which ends in Bates Number 509597. 20 Do you see there on the left 21 side, the first full row, it says 22 "strategic skills"? Do you see that? 23 A. Where are we at here? 24 Q. That page right there.</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. And then immediately to the 2 right of that it says "supervisor 3 assessment"? 4 A. Yes. 5 Q. So what was the process for 6 these annual reviews? Did you do an 7 assessment of yourself before meeting 8 with a supervisor? 9 A. Yes. 10 Q. And would you have done that 11 self-assessment using this chart that's 12 presented on Page 1 of Exhibit 1? 13 A. Yes. 14 Q. And then what was the 15 process after you conducted the 16 self-assessment? What happened next? 17 A. It would be given to my 18 supervisor to do their assessment. 19 Q. And then what happened after 20 your supervisor did their assessment? 21 A. We both sign the assessment, 22 and that's it. 23 Q. Would you have discussed 24 your self-assessment with your</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Okay. 2 Q. If you go over -- one, two, 3 three, four -- five columns there's a 4 bold line that says "strength." 5 Do you see that? 6 A. Yes. 7 Q. And then underneath that 8 there is another one that says 9 "opportunity." And under that there's 10 another bold line that says "comments." 11 Do you see that? 12 A. I see it. 13 Q. Under the comments section, 14 it says, "All holiday rolls successful. 15 DEA and VAWD portion of CS audit 16 successful" -- or -- "CSA audit 17 successful." 18 Do you see that? 19 A. I see it. 20 Q. What is a -- what is a DEA 21 and VAWD audits that are referenced 22 there? 23 MR. LAVELLE: Object to 24 form.</p>

Page 98

1 THE WITNESS: A DEA audit?
2 BY MR. CLUFF:
3 Q. Yeah.
4 A. It's an inspection of our
5 control cage procedures.
6 Q. So sometime in 2014 the DEA
7 inspected the control cage procedures?
8 A. It doesn't mean necessarily
9 that they did it. But they might have
10 made phone calls or they might have
11 there -- it's a comment, and VAWD. So I
12 threw it altogether. I mean, they might
13 not have specifically showed up that
14 year. But that doesn't mean that I don't
15 put it down as a strength.
16 Q. Okay. What does the "VAWD
17 portion of CSA audit successful" refer
18 to?
19 A. Verified Accredited
20 Wholesale Distribution. It's -- that's
21 what it is.
22 Q. What is that?
23 A. It's an organization in the
24 United States that all pharmaceutical --

Page 99

1 pharmacists get together and agree that
2 distribution centers should meet minimum
3 standards in processing, receiving,
4 shipping and storing pharmacy drugs.
5 Q. Was that some sort of a
6 certification that Rite Aid was required
7 to obtain to distribute or sell
8 controlled substances?
9 MR. LAVELLE: Object to
10 form.
11 THE WITNESS: It's not a
12 requirement but the State of
13 Maryland likes for their
14 distribution centers to be
15 certified in VAWD.
16 BY MR. CLUFF:
17 Q. And was the VAWD
18 certification part of your job
19 responsibilities?
20 A. I prepared the SOPs to
21 explain to the VAWD organization what we
22 did with our pharmacists.
23 Q. If you go over two more, it
24 looks like that would be the column for

Page 100

1 the supervisor assessment.
2 A. Mm-hmm.
3 Q. The comment there is -- I
4 want to focus on a portion of it that
5 says, "Keith is always on top of the
6 required DEA and VAWD requirements and
7 single-handedly provides the criteria
8 needed to assure full compliance within
9 those guidelines."
10 Do you see that?
11 A. I see it.
12 Q. When your supervisor refers
13 to full compliance within those
14 guidelines, was he referring to DEA
15 guidelines or VAWD requirements, do you
16 know?
17 MR. LAVELLE: Object to
18 form.
19 THE WITNESS: No, I don't
20 know.
21 BY MR. CLUFF:
22 Q. Was it your experience that
23 you were single-handedly providing
24 criteria to necessarily assure full

Page 101

1 compliance?
2 A. I authored all of the VAWD
3 SOPs.
4 Q. Were there a separate set
5 of -- when you say VAWD, were you using
6 VAWD as a word?
7 MR. LAVELLE: Object to
8 form.
9 THE WITNESS: It's an
10 abbreviation for the Verified
11 Accredited Wholesale Distribution.
12 BY MR. CLUFF:
13 Q. Okay. So is there a
14 separate set of operating procedures for
15 the VAWD?
16 A. Versus?
17 Q. Just DEA compliance
18 guidelines or Rite Aid standard operating
19 procedures?
20 MR. LAVELLE: Object to
21 form.
22 THE WITNESS: No, there's no
23 separate.
24 BY MR. CLUFF:

<p style="text-align: right;">Page 102</p> <p>1 Q. Let's move down to the next 2 row on that same page. Do you see on the 3 left-hand side it says "performance"? 4 A. Yes. 5 Q. Okay. If we go over into 6 the middle column where there's the same 7 bold headings, strength, opportunity, 8 comment. 9 Do you see that? 10 A. Yes. 11 Q. Okay. And that's the 12 portion that you would have created for 13 your self-assessment, correct? 14 A. Correct. 15 Q. Under the bold heading that 16 says, "Opportunity, customer focus - 17 understands the customer." 18 Do you see that? 19 A. Yes. 20 Q. What did you mean when you 21 said that was an opportunity to 22 understand the customer? 23 A. Oh, that was referring to -- 24 we refer in our building that departments</p>	<p style="text-align: right;">Page 104</p> <p>1 form. 2 THE WITNESS: Yes. 3 BY MR. CLUFF: 4 Q. Okay. Was there any sort of 5 like a corporate culture like that at 6 Rite Aid regarding servicing its 7 customers? 8 MR. LAVELLE: Object to 9 form. 10 THE WITNESS: I don't know 11 what "like that" means. The 12 stores were supposed to give them 13 the product on time. That's 14 servicing our stores. 15 BY MR. CLUFF: 16 Q. Please turn to the next 17 page. Here there's another chart with a 18 heading over it that says "career 19 aspirations." 20 Do you see that? 21 A. I do. 22 Q. On the left on the bottom it 23 says, "Associate career goals/interests." 24 Do you see that?</p>
<p style="text-align: right;">Page 103</p> <p>1 are also our customers, not just stores. 2 So that's where I put that focus, another 3 department. 4 Q. What department were you 5 referring to? 6 A. I don't recall which one I 7 was referring to back then. 8 Q. So at Rite Aid, just so that 9 I understand, based on what you just 10 testified, Rite Aid associates view 11 customers and other departments as 12 customers, right? 13 A. Yes. 14 Q. Okay. And is there any sort 15 of policy or corporate culture around 16 relationship to the customer, i.e., the 17 stores? 18 A. Repeat the question. 19 Q. Yeah. It was not a really 20 well-worded question. 21 So I'm sure you've heard the 22 saying, "The customer is always right." 23 Do you know what I mean? 24 MR. LAVELLE: Object to</p>	<p style="text-align: right;">Page 105</p> <p>1 A. Yes. 2 Q. Okay. And there, that's a 3 portion that you would have written, 4 correct? 5 A. Yes. 6 Q. And you wrote, "Would like 7 to maintain department manager level 8 position in company given that Rx is 9 being dissolved." 10 What did you mean when you 11 wrote that? 12 A. Well, pharmacy was being 13 dissolved in 2014. And there was no -- 14 no guarantee that there would be a 15 position available in the distribution 16 center for me. 17 Q. We may have discussed this 18 earlier. But I just want to make sure 19 that we kind of close the loop between 20 this document and what we discussed 21 earlier. Why was pharmacy being 22 dissolved in 2014? 23 A. Business decision, that's 24 the only thing I can say.</p>

<p style="text-align: right;">Page 106</p> <p>1 Q. Did it have anything to do 2 with Rite Aid's decision to stop 3 distributing hydrocodone products? 4 A. I have no idea. 5 Q. Was a manager level position 6 made available for you after pharmacy was 7 dissolved? 8 A. Yes. 9 Q. I want to move ahead a few 10 pages in this document. If you -- 11 looking at the bottom of the document, 12 you'll see there are what we -- we refer 13 to as Bates numbers. Do you see that in 14 the bottom right corner? 15 A. Okay. 16 Q. So if you move forward to 17 the eighth page, that number -- that page 18 ends in 50603. 19 A. Okay. 20 Q. All right. So -- yeah, 21 you've got the right page. Looking at 22 the top of that document it looks like 23 this is an annual performance review for 24 FY 2013. Do you see that?</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. And what were those delivery 2 goals in 2013? 3 A. I don't know. It says here 4 98 percent. 5 Q. Well, what are they 6 measuring in terms of delivery goals? 7 A. The outbound department 8 truck typically had about three at the 9 most, maybe four stores, and they had to 10 be at those stores within a certain 11 amount of time window to make the 12 deliveries to the stores. 13 Q. So then, this means that 14 they missed that -- that goal by less 15 than .5 of a percent? 16 A. Yes. 17 Q. Okay. The next sentence in 18 that -- in that little box says, "AES 19 survey results came in at a 47 versus a 20 48 for FY '12 resulting in a negative 21 3.36 percent result." 22 Do you know what AES survey 23 there refers to? 24 A. Yes.</p>
<p style="text-align: right;">Page 107</p> <p>1 A. Okay. 2 Q. Starting in the first row of 3 the -- the chart there, the associate 4 objective is referred to as service, do 5 you see that? 6 A. Mm-hmm. 7 MR. LAVELLE: Give an 8 audible answer. 9 THE WITNESS: Sorry, yes. 10 BY MR. CLUFF: 11 Q. And -- okay. If you go over 12 to the supervisor assessment, it looks 13 like the supervisor gave an assessment of 14 needs development. Do you see that? 15 A. Okay. 16 Q. It says, "The on-time goal 17 was missed by .41 percent with a 97.59 18 versus a goal of 98 percent." 19 Do you know what that refers 20 to? 21 A. Yes. 22 Q. What does that refer to? 23 A. The building's outbound 24 delivery goals.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. What does that refer to? 2 A. It's the associate 3 satisfaction survey. 4 Q. What is an associate 5 satisfaction survey? 6 A. The associates in the 7 building -- well, actually supply chain, 8 but our building, had the opportunity and 9 myself included as managers to answer a 10 series of questions concerning the -- the 11 building. 12 Q. What do you mean answer a 13 series of questions about the building? 14 A. Well, and supply chain. 15 Like one question would be, I intend to 16 be in Rite Aid, working for Rite Aid in 17 the next six months. 18 Q. I'm trying to understand who 19 would have been filling out the survey 20 and what it would have been about, so I 21 want to back up and just get a little 22 more clarification here. 23 You said something about the 24 supply chain. What were you referring to</p>

Page 110

1 when you used the phrase "the supply
2 chain"?

3 MR. LAVELLE: Object to
4 form.

5 THE WITNESS: All
6 distribution centers.

7 BY MR. CLUFF:

8 Q. So all of the Rite Aid
9 associates who worked in a distribution
10 center were able to fill out this survey?

11 A. As well as corporate Rite
12 Aid also.

13 Q. Okay. And the survey was
14 about workplace or job satisfaction?

15 A. Correct.

16 Q. Were there any questions
17 about the performance of job
18 responsibilities on that kind of a
19 survey?

20 A. No.

21 Q. And you recall filling out
22 these surveys?

23 A. I think they were phone
24 calls. You dialed a number and the

Page 111

1 survey would be over the phone.

2 Q. Do you ever recall reviewing
3 any written results of those surveys?

4 A. Maybe once.

5 Q. When, when was that?

6 A. I don't remember.

7 Q. What do you recall
8 reviewing?

9 A. The general -- general
10 manager would get up in front of all the
11 managers there, and they would just
12 discuss what percentage this question
13 got, versus maybe other distribution
14 centers, so just go over the results of
15 the building.

16 Q. So if, for example, you
17 called in and went through the telephonic
18 survey, do you know if your answers were
19 recorded at all?

20 A. They are all anonymous.

21 Q. But the results were kept
22 somewhere based on your understanding, it
23 sounds like?

24 A. Yes. Whatever company the

Page 112

1 Rite Aid hired to answer -- ask those
2 questions.

3 Q. Do you know what company
4 Rite Aid hired to ask those questions?

5 A. No, I do not.

6 MR. CLUFF: I want to make a
7 note on the record, Counsel,
8 let's -- let's take an opportunity
9 later to meet and confer about
10 those. I'm not sure if they've
11 been produced. I'm not saying
12 that they should have been, but I
13 just want to take the opportunity
14 at some point.

15 MR. LAVELLE: Okay. We can
16 discuss that offline.

17 MR. CLUFF: Yeah.

18 BY MR. CLUFF:

19 Q. All right. Let's go down to
20 the next row under the associate
21 objectives column. It says growth. Do
22 you see that?

23 A. Yes, I do.

24 Q. Okay. Going over to the

Page 113

1 supervisor assessment column, it looks
2 like the assessment is meets
3 expectations. And then it continues and
4 it says, "FY '13 UPH goal was missed by
5 3.05 percent." Do you know what a UPH
6 goal was?

7 A. Units per hour goal I think.

8 Q. So what is units per hour
9 goal measuring?

10 A. That would -- measures the
11 buildings, how many units were produced
12 based on the number of hours it took to
13 produce it. So it would take all the
14 associate hours worked and divide it into
15 the units.

16 Q. Okay. At the bottom of this
17 page, there's a -- there is a row that
18 says overall comments, and then on the
19 right side it says overall supervisory.
20 Do you see that?

21 A. Yes.

22 Q. And it looks like the
23 comments there bleed over to the next
24 page, which would be on the back side of

<p style="text-align: right;">Page 114</p> <p>1 the one you're looking at. 2 A. Okay. 3 MR. LAVELLE: Other 4 direction. 5 THE WITNESS: Oh okay. 6 Okay. 7 BY MR. CLUFF: 8 Q. In the middle there, the 9 supervisor writes, "I would like to see 10 Keith take more of a leadership role and 11 provide positive input/recommendations on 12 a daily basis" -- "daily basis." 13 Do you see that? 14 A. Yes. 15 Q. Do you recall what, if 16 anything, your supervisor at this time 17 would have communicated about you taking 18 a leadership role? 19 MR. LAVELLE: Object to 20 form. 21 THE WITNESS: Yes. 22 BY MR. CLUFF: 23 Q. Okay. What -- what did -- 24 what do you recall?</p>	<p style="text-align: right;">Page 116</p> <p>1 the chart there is a row that says 2 interpersonal skills. Do you see that? 3 A. Yes, I do. 4 Q. Okay. In the 5 self-assessment column, you wrote, meets 6 expectations, and then in the bottom 7 there's some text under that, the bold 8 word "comment." Do you see that block? 9 A. Yes, I do. 10 Q. In the middle there, you 11 write, "Participates in CSA audit team"? 12 A. Yes. 13 Q. What was the CSA audit team? 14 A. It was a supply chain audit 15 team that traveled to distant -- 16 different distribution centers and did 17 internal audits for the distribution 18 centers. 19 Q. Okay. How did -- how were 20 those audits conducted? 21 A. How were they conducted? 22 Q. Mm-hmm. 23 A. Well, it was a group of us 24 from different distribution centers and</p>
<p style="text-align: right;">Page 115</p> <p>1 A. These objectives that we're 2 just looking at, you mentioned here, 3 objectives. These are building goals. 4 So all managers have to meet -- these 5 were how the building did and all 6 managers were based on how the building 7 met. 8 This, what you're talking 9 about here, was a question that -- that I 10 made sure that my departments were 11 working efficiently and top notch and the 12 supervisor just wanted me to share some 13 of my experience with some of the other 14 departments. 15 Q. Go ahead and turn the page 16 for me. And -- 17 A. What page are we on now? 18 Q. I think you turned two, they 19 are a little stuck together. Do you see 20 that one -- yeah, right there, that at 21 the very top right corner it says 3 of 22 40? 23 A. Yes. 24 Q. Okay. There at the top of</p>	<p style="text-align: right;">Page 117</p> <p>1 we would like say go to Woodland, and we 2 had a series of questions on different 3 areas of the distribution center's 4 operation. And we'd go and look for 5 items that pertain to that checklist. 6 Q. How were the distributions 7 selected for audits? 8 A. The -- there is a schedule 9 posted. Every DC knows when they are 10 going to be audited during the year. 11 Q. So the audits were not by 12 surprise or at random? 13 A. Not these, these audits, no. 14 Q. And these were internal 15 audits that were conducted by Rite Aid? 16 A. Yes. Internal assurance. 17 Q. The questions that were 18 created for these audits or that were 19 used for these audits, who created them? 20 MR. LAVELLE: Object to 21 form. 22 THE WITNESS: There was a 23 group of individuals from 24 corporate, staff, depending on</p>

Page 118

1 what their area of expertise were,
 2 they would come up with the
 3 questions.
 4 BY MR. CLUFF:
 5 Q. When an audit was conducted,
 6 would you take these questions with you
 7 to the audit?
 8 A. Yes.
 9 Q. Okay. And how would you
 10 answer the questions? Would you write on
 11 the -- the paper itself or would you just
 12 make notes and then record it later
 13 electronically?
 14 MR. LAVELLE: Object to
 15 form.
 16 THE WITNESS: We had the
 17 questions, and as an audit member,
 18 we would look, depending on what
 19 the question was, whether we were
 20 looking at a policy or make an
 21 observation. And then we'd write
 22 down a yes or no. That would be
 23 turned into the team leader, and
 24 the team leader would then

Page 119

1 summarize everything and give the
 2 distribution center a score.
 3 BY MR. CLUFF:
 4 Q. The team leader, was that
 5 the team leader of the audit?
 6 A. Yes.
 7 Q. Okay. So the -- the team
 8 leader would receive these -- these forms
 9 from the members of the audit team that
 10 were at a distribution center?
 11 A. Yes.
 12 Q. And then they would compile
 13 that into a summary and give the
 14 distribution center a score?
 15 A. Correct.
 16 Q. Okay. Do you know what
 17 happened with the papers that were turned
 18 in to the team leader?
 19 A. No, I do not know.
 20 Q. Were you ever a team leader
 21 for audits of distribution centers?
 22 A. No.
 23 Q. If you can recall, how many
 24 of these audits do you think that you

Page 120

1 participated in during your time at Rite
 2 Aid? Let me narrow it down. How about
 3 between 2003 and 2014?
 4 MR. LAVELLE: Object to
 5 form.
 6 THE WITNESS: Five.
 7 BY MR. CLUFF:
 8 Q. Do you recall which
 9 distribution centers you would have
 10 audited?
 11 A. I know the ones that I --
 12 yeah, Woodland, Tuscaloosa -- Woodland,
 13 California; Tuscaloosa, Alabama; Pontiac,
 14 Michigan; Liverpool, New York; Lancaster,
 15 California. I'm trying to get them
 16 during that time frame. And maybe
 17 Wilsonville, Oregon.
 18 Q. Between 2003 and 2014, was
 19 the Perryman center audited?
 20 MR. LAVELLE: Object to
 21 form.
 22 THE WITNESS: Yes.
 23 BY MR. CLUFF:
 24 Q. Do you recall how many

Page 121

1 times?
 2 A. No.
 3 Q. After an audit was conducted
 4 and the team lead created the summary,
 5 did the team leader then give that
 6 summary and the results to the manager of
 7 a distribution center?
 8 A. The general manager, yes.
 9 Q. Between 2003 and 2014, who
 10 is the general manager of the Perryman
 11 distribution center?
 12 A. We had a couple of them. I
 13 might not remember them all. John
 14 Cooper, Tim Peifley.
 15 Q. How do you spell
 16 Mr. Peifley's last name?
 17 A. P-E-I-F-L-E-Y. Norman
 18 Duncanson, Gary Knopka.
 19 Q. How do you spell
 20 Mr. Knopka's last name?
 21 A. K-N-O-P-K-A.
 22 Q. These individuals would have
 23 received the results of an audit of the
 24 Perryman distribution center?

Page 122

1 A. Yes.

2 Q. And would those individuals

3 have shared any of the results with

4 the -- of an audit of Perryman with you?

5 A. Yes.

6 Q. Do you recall receiving the

7 results of any Perryman distribution

8 center audits?

9 A. The general manager would

10 have shared the results with us.

11 Q. How would they have shared

12 those with you?

13 A. They would have all the

14 managers come together and they would

15 discuss the results.

16 Q. Would you have been handed a

17 copy or given a copy by e-mail?

18 MR. LAVELLE: Object to

19 form.

20 THE WITNESS: He would use a

21 PowerPoint on the screen and the

22 supply chain would put all the

23 audit reviews on the shared drive.

24 BY MR. CLUFF:

Page 123

1 Q. Do you recall viewing

2 PowerPoint presentations about the

3 distribution center audits?

4 A. Yes, I do.

5 Q. What kind of information

6 would have been contained in those

7 PowerPoints?

8 A. They would have covered if

9 any area in the building got an auto

10 fail, meaning red, or a yellow where

11 there's opportunity, or green for pass.

12 Q. Going back to the document

13 that's in front of you, Exhibit 1. That

14 same row, "interpersonal skills" under

15 your self-assessment, you continue after

16 the line that we just discussed and say,

17 "Ensured all associates received fair and

18 objective evaluation and training."

19 Do you see that? It's under

20 the column section --

21 A. Okay.

22 Q. Okay. And the next sentence

23 is, "Developed operation procedures for

24 CD QA stations and ensured training was

Page 124

1 effective."

2 Do you see that sentence?

3 A. Yes.

4 Q. What are CD QA stations?

5 A. Control drug quality

6 assurance stations.

7 Q. What are the operating

8 procedures that you would have developed

9 for the control drug quality assurance

10 stations?

11 A. How to use the machine.

12 Q. So the CD QA stations were a

13 machine?

14 A. It was a scanning device so

15 that associates could scan each and every

16 item that they picked.

17 Q. So as they were picking

18 them, then after they had -- after they

19 picked them, they had to run them through

20 this scanning machine to make sure they

21 were correct?

22 A. Yes.

23 Q. And that happened in the

24 control cages?

Page 125

1 A. Yes.

2 Q. These CD QA stations, was

3 that a new technology that Rite Aid was

4 implementing at this time?

5 A. Yes. Prior to that they

6 were manually done.

7 Q. So the quality assurance

8 happened manually before these were

9 implemented?

10 MR. LAVELLE: Object to

11 form.

12 THE WITNESS: Yes.

13 BY MR. CLUFF:

14 Q. Moving over to the right in

15 that same chart. It says, "Supervisor

16 assessment." And the supervisor also

17 rated this as meets expectations.

18 Do you see that?

19 A. Yes.

20 Q. Under the comment section,

21 in the center, it says, "Keith does not

22 always express his disagreement in the

23 correct forum. This sometimes leads his

24 team to appear negative in their

Page 126

1 willingness to the 'one team' concept."
2 What is the one team
3 concept?
4 A. One building.
5 Q. Okay. What does that mean
6 to you?
7 A. One building? It means all
8 the departments working in the same level
9 and speed and working together.
10 Q. When your supervisor wrote,
11 "Keith does not always express his
12 disagreement in the correct forum," do
13 you recall in 2013 what that might refer
14 to?
15 MR. LAVELLE: Object to
16 form.
17 THE WITNESS: No, I do not.
18 BY MR. CLUFF:
19 Q. Do you recall any instances
20 between 2003 and 2014 where you disagreed
21 with something that your general manager
22 was doing at the distribution center in
23 Perryman?
24 A. No, I do not.

Page 127

1 Q. Do you recall any instances
2 where you disagreed with something that
3 was happening at the corporate level?
4 A. No, I do not.
5 Q. Do you recall any instances
6 where you disagreed with something that
7 was happening at Rite Aid?
8 A. At Rite Aid?
9 Q. Mm-hmm.
10 A. Rite Aid in general or the
11 DC in particular?
12 Q. Let's start with Rite Aid in
13 general.
14 A. No.
15 Q. Okay. How about at the DC?
16 A. I might have showed my
17 displeasure if I thought a department
18 wasn't doing their share, wasn't meeting
19 their metrics like I was in Rx.
20 Q. Do you recall any
21 departments that weren't meeting their
22 metrics or not doing their share?
23 A. No.
24 Q. This one team concept, was

Page 128

1 it essentially that Rite Aid wanted the
2 departments at the DC center to all work
3 together and kind of get along?
4 A. Get along? What do you mean
5 get along?
6 Q. Let's just limit that
7 question to work together, that they
8 would all work together.
9 MR. LAVELLE: Object to
10 form.
11 THE WITNESS: To work
12 efficiently together.
13 BY MR. CLUFF:
14 Q. Okay. The manager continues
15 and says, "Keith will need to work with
16 his team to assure that they are looking
17 at the big picture and understand the
18 needs of all versus the individual
19 department."
20 Do you see that?
21 A. I see it.
22 Q. Do you recall what your
23 manager was talking about in there?
24 A. I'm vaguely familiar with

Page 129

1 what he meant.
2 Q. Okay. What did he mean?
3 What's your vague recollection?
4 A. Rx had the best UPH quality
5 and control of any department in the
6 building. It was constantly meeting its
7 metrics. And the other departments
8 weren't close.
9 Q. So how did that refer to the
10 needs of all versus the individual
11 department?
12 A. Well, back to the other
13 pages, they wanted more resource
14 leveraging and experience and knowledge
15 to help the other departments out.
16 Q. So they wanted your
17 department to help the other departments?
18 A. Wanted us to give more
19 associates a little more quicker, if they
20 were understaffed, that kind of thing.
21 Q. At the bottom of that page
22 it says -- the next row is talent
23 management.
24 Do you see that?

<p style="text-align: right;">Page 130</p> <p>1 A. Okay.</p> <p>2 Q. If you flip to the next page</p> <p>3 which would be behind the one that you're</p> <p>4 looking at, as you flip it. At the top</p> <p>5 it will say 4 of 30.</p> <p>6 MR. LAVELLE: Other</p> <p>7 direction.</p> <p>8 THE WITNESS: Okay.</p> <p>9 MR. LAVELLE: What's the</p> <p>10 Bates number?</p> <p>11 MR. CLUFF: 50606.</p> <p>12 MR. LAVELLE: Got it. Yep.</p> <p>13 MR. CLUFF: Okay, great.</p> <p>14 BY MR. CLUFF:</p> <p>15 Q. At the top there, the row</p> <p>16 that we just talked about continues, all</p> <p>17 the way to the right in the supervisor</p> <p>18 assessment portion, it says, "Taking</p> <p>19 risks is a part of our everyday planning</p> <p>20 if we are going to work as 'one team' and</p> <p>21 think outside the box."</p> <p>22 A. Okay.</p> <p>23 Q. "Sometimes Keith is</p> <p>24 resistant to try things beyond the status</p>	<p style="text-align: right;">Page 132</p> <p>1 picking goals, or shipping goals,</p> <p>2 I might have resisted that</p> <p>3 request.</p> <p>4 BY MR. CLUFF:</p> <p>5 Q. Who would that request have</p> <p>6 come from?</p> <p>7 A. Maybe my ops manager</p> <p>8 possibly.</p> <p>9 Q. Do you remember at Rite Aid</p> <p>10 at any point in time if the company was</p> <p>11 encouraging associates to engage in</p> <p>12 boundary breaking and/or adjusting</p> <p>13 behavior?</p> <p>14 MR. LAVELLE: Object to</p> <p>15 form.</p> <p>16 THE WITNESS: No, I do not.</p> <p>17 BY MR. CLUFF:</p> <p>18 Q. If you can flip to the next</p> <p>19 page at the top, it will say 5 of 40.</p> <p>20 The Bates number will be 50607.</p> <p>21 A. Okay.</p> <p>22 Q. Got it? At the bottom there</p> <p>23 it says -- there is a row that says</p> <p>24 "overall competency rating."</p>
<p style="text-align: right;">Page 131</p> <p>1 quo."</p> <p>2 What are some of the things</p> <p>3 beyond the status quo that you were</p> <p>4 resistant to trying?</p> <p>5 MR. LAVELLE: Object to</p> <p>6 form.</p> <p>7 THE WITNESS: I always, as a</p> <p>8 department manager, always wanted</p> <p>9 to make sure that pharmacy was</p> <p>10 going to meet its objectives and</p> <p>11 not -- and not, not meet its</p> <p>12 objectives.</p> <p>13 BY MR. CLUFF:</p> <p>14 Q. So what -- in doing that,</p> <p>15 what were -- like, what did you have to</p> <p>16 do that prevented you from trying things</p> <p>17 outside the status quo?</p> <p>18 MR. LAVELLE: Object to</p> <p>19 form.</p> <p>20 THE WITNESS: He might have</p> <p>21 asked for four or five associates.</p> <p>22 And if I thought that four or five</p> <p>23 associates would prevent pharmacy</p> <p>24 from meeting its stocking goals,</p>	<p style="text-align: right;">Page 133</p> <p>1 A. Okay.</p> <p>2 Q. And your supervisor ranked</p> <p>3 it as meets expectations.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Okay. In the middle of that</p> <p>7 paragraph, there's a sentence that</p> <p>8 starts, "Facilitating change."</p> <p>9 Do you see where I'm at?</p> <p>10 A. Mm-hmm.</p> <p>11 Q. "Facilitating change is an</p> <p>12 opportunity for Keith both in boundary</p> <p>13 breaking and adjusting behavior."</p> <p>14 Do you see that?</p> <p>15 A. I see it.</p> <p>16 Q. Do you have any recollection</p> <p>17 what that means?</p> <p>18 A. I have no idea.</p> <p>19 Q. Okay. Continuing it says,</p> <p>20 "Sometimes Keith visibly shows his</p> <p>21 discontent with a change to his team</p> <p>22 through his responses and body language.</p> <p>23 It is fine to provide feedback regarding</p> <p>24 one's objections to a change as long as</p>

Page 134

1 in the end it is understood what the
2 change intels (sic) and assuring that the
3 team does not see that discontent."
4 Do you see that?
5 A. I do.
6 Q. And then the last sentence
7 is, "It's hard to sell it like you wrote
8 it if the team already knows you didn't."
9 What did "sell it like you
10 wrote it" mean?
11 A. I don't know what that
12 means.
13 Q. Reading that paragraph, or
14 the second half of that paragraph, do you
15 have any understanding what your -- what
16 your supervisor was referring to about
17 these changes that you seemed resistant
18 to?
19 A. No, I don't.
20 Q. During this time in 2013, do
21 you recall any other changes that were
22 being proposed about -- about your team
23 that you were unhappy with?
24 A. No.

Page 135

1 Q. Let's go to the next page.
2 In the top right corner it will say 6 of
3 40, and the Bates number will be 50608.
4 A. Okay.
5 Q. There again, like we talked
6 about in 2014, there's a chart that says
7 career aspirations, right?
8 A. Mm-hmm.
9 Q. And in the lower left corner
10 it says associate career goals/interests.
11 Do you see that?
12 A. I do.
13 Q. And you wrote, "After being
14 the part of the removal of the operations
15 manager level in the distribution center,
16 I have tried unsuccessfully to be
17 promoted to a senior operations manager."
18 Do you see that?
19 A. I do.
20 Q. Do you recall what you meant
21 when you were writing that?
22 A. Yeah. They eliminated -- I
23 think I mentioned to you a while back,
24 that they -- they eliminated the

Page 136

1 operations manager level. Myself and two
2 other people were made department
3 managers.
4 Q. Was that a demotion in
5 effect?
6 A. It's no longer -- it wasn't
7 an operations manager. It was department
8 manager, because they wanted to save
9 money.
10 Q. What do you mean they wanted
11 to save money?
12 A. Well, when you -- an
13 operations manager, you qualified for a
14 10 percent bonus versus a 5 percent
15 bonus.
16 Q. So in moving you back down
17 to a department manager, they essentially
18 eliminated some of your potential bonus?
19 A. Correct.
20 Q. And then what is this
21 reference to "trying unsuccessfully to be
22 promoted to a senior operations manager,"
23 what does that mean?
24 A. One department -- one senior

Page 137

1 operations manager had left and I had
2 interviewed for it.
3 Q. Okay. And you were not
4 selected?
5 A. Correct.
6 Q. Was there any discussion
7 about why you were not selected?
8 A. No.
9 Q. Who ended up receiving that
10 position?
11 A. I don't recall who it was.
12 Q. Let's move forward a few
13 pages. This page will now say Page 1 of
14 22, and the Bates number will be 50610.
15 A. Okay.
16 Q. Do you see that?
17 A. Yes.
18 Q. The top there it says annual
19 performance review, FY 2012. Do you see
20 that?
21 A. Yes.
22 Q. Okay. Midway down the page
23 at the top of the chart, there is an
24 objective that says business -- business

<p style="text-align: right;">Page 138</p> <p>1 growth. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. In the objective details</p> <p>4 column, there is a Number 1. It says,</p> <p>5 "Support RAPTAR and CCC initiatives."</p> <p>6 What are RAPTAR initiatives?</p> <p>7 A. RAPTAR is respect,</p> <p>8 accountability -- an interaction term</p> <p>9 among associates in the building and</p> <p>10 supply chain.</p> <p>11 Q. What was the goal of the</p> <p>12 RAPTAR initiative?</p> <p>13 A. To be treated as you'd like</p> <p>14 to be treated.</p> <p>15 Q. What was a CCC initiative?</p> <p>16 A. That was the committee</p> <p>17 established among associates to make</p> <p>18 improvements in the building, suggested</p> <p>19 improvements. Community -- community</p> <p>20 relations and that sort of thing.</p> <p>21 Q. What were some of the</p> <p>22 suggested improvements of the building?</p> <p>23 A. The initiatives. I don't</p> <p>24 remember if they had any particular one</p>	<p style="text-align: right;">Page 140</p> <p>1 pages. In the top right corner it will</p> <p>2 say Page 4 of 22, and the Bates number</p> <p>3 will be 50612.</p> <p>4 A. Okay.</p> <p>5 Q. In the middle there, there</p> <p>6 is a row that says opportunities.</p> <p>7 A. Okay.</p> <p>8 Q. Under that it says customer</p> <p>9 focus, do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Under the associate</p> <p>12 assessment you write, "Maintain feedback</p> <p>13 from stores." What did you mean when you</p> <p>14 wrote that?</p> <p>15 A. Oh. I thought that it</p> <p>16 would -- would have been nice for us to</p> <p>17 have something established where the</p> <p>18 stores could say, oh, you're making our</p> <p>19 deliveries on time. Just get some kind</p> <p>20 of feedback on how we as a distribution</p> <p>21 center were doing servicing them.</p> <p>22 Q. Did you implement that?</p> <p>23 A. Implement that?</p> <p>24 Q. Yeah.</p>
<p style="text-align: right;">Page 139</p> <p>1 that they -- housekeeping, I think, in</p> <p>2 the building might have been one of them.</p> <p>3 Q. When you refer to</p> <p>4 housecleaning, do you mean cleanliness?</p> <p>5 A. Yes.</p> <p>6 Q. Going down one more row,</p> <p>7 there's another objective that says</p> <p>8 customer/associate satisfaction. Do you</p> <p>9 see that?</p> <p>10 A. Yes.</p> <p>11 Q. Going all the way over to</p> <p>12 the right under supervisor assessment,</p> <p>13 there is a Roman numeral -- or there's a</p> <p>14 letter, a Number 1-A, 2-A, 3-A, 4-A?</p> <p>15 A. Okay.</p> <p>16 Q. Number 2-A says, "Both</p> <p>17 departments reporting to Keith exceeded</p> <p>18 their RAR goals."</p> <p>19 Do you see that?</p> <p>20 A. Okay.</p> <p>21 Q. What are RAR goals?</p> <p>22 A. I don't recall what that</p> <p>23 stands for right now.</p> <p>24 Q. Let's move forward three</p>	<p style="text-align: right;">Page 141</p> <p>1 A. This was a -- we -- one of</p> <p>2 our HR managers, senior HR managers</p> <p>3 allowed us to go visit stores.</p> <p>4 Q. Were there any kind of --</p> <p>5 A. It was called greet and</p> <p>6 meet. No reports.</p> <p>7 Q. Okay. So one of the HR</p> <p>8 managers allowed, you said us to go visit</p> <p>9 stores. Who is us?</p> <p>10 A. Well, I mean a couple</p> <p>11 department managers gave us a couple</p> <p>12 stores that we could go visit.</p> <p>13 Q. Who else went with you on</p> <p>14 those visits?</p> <p>15 A. I had one manager with me,</p> <p>16 we did it one time.</p> <p>17 Q. Who was that?</p> <p>18 A. Our safety manager, that's</p> <p>19 now our safety manager, but at the time</p> <p>20 was another department manager.</p> <p>21 Q. And what was the purpose</p> <p>22 from your perspective of going to visit</p> <p>23 that store?</p> <p>24 A. To see how our deliveries</p>

<p style="text-align: right;">Page 142</p> <p>1 were being made. I mean, if they opened 2 up a tote, if everything was good and 3 wasn't damaged and it wasn't trashy. 4 Q. While you were there, you 5 didn't look at any of the prescriptions 6 that were being filled, did you? 7 A. No. 8 Q. You didn't look at any of 9 the customers that were coming in to have 10 their prescriptions filled? 11 A. No. 12 Q. Did you look at whether or 13 not customers were paying in cash versus 14 using insurance? 15 A. No. 16 Q. Did you look at the 17 percentage of controlled substances that 18 were being dispensed versus any other 19 products? 20 A. No. 21 Q. And you said there was no 22 written report of that meeting created, 23 right? 24 A. No. I don't remember any</p>	<p style="text-align: right;">Page 144</p> <p>1 a comment that I disagreed with, I might 2 have rolled my eyes or I might have said 3 something that they needed to do their 4 share of the work. 5 Q. If you go down one row on 6 that supervisor assessment, there's a row 7 that says building collaborative 8 relationships. Do you see that? 9 A. I do. 10 Q. And your supervisor writes, 11 "In keeping with the previous comments, 12 Keith needs to develop his relationships 13 among the managers in the DC. His 14 knowledge and experience can only assist 15 the DC operations if he engages with the 16 team." 17 Do you recall what your 18 supervisor was referring to there? 19 A. No. 20 Q. Did you have a hard time 21 getting along with other associates at 22 the Perryman distribution center? 23 A. No. 24 MR. LAVELLE: Object to</p>
<p style="text-align: right;">Page 143</p> <p>1 report. 2 Q. Moving over to supervisor 3 assessment and that same customer focus 4 line. Your supervisor writes, "Keith 5 needs to improve his interactions with 6 and accountability to his peers within 7 the DC management team." 8 A. Mm-hmm. 9 Q. Do you know what that 10 referred to? 11 A. How I got along with maybe 12 other department managers that were not 13 meeting expectations. 14 Q. Did you have a hard time 15 getting along with other managers if they 16 didn't meet expectations? 17 A. No. 18 MR. LAVELLE: Object to 19 form. 20 BY MR. CLUFF: 21 Q. Do you know why then your 22 supervisor identified it as an area for 23 you to improve on? 24 A. If somebody would have made</p>	<p style="text-align: right;">Page 145</p> <p>1 form. 2 BY MR. CLUFF: 3 Q. How about other managers? 4 A. No. 5 Q. At any time when you were a 6 manager at the Perryman center from 2003 7 to 2014, were you ever asked to do 8 anything you didn't agree with? 9 A. No. 10 Q. Were you ever asked to send 11 any orders that you felt like shouldn't 12 have been shipped? 13 A. No. 14 Q. I want to move forward to a 15 number of pages, to the page that has the 16 Bates Number 50616. 17 A. Okay. 18 Q. Looking at this document, at 19 the very top in -- in that black square 20 that says FY '12, salary-objective 21 planning worksheet? 22 A. Mm-hmm. 23 Q. Do you know what this would 24 have been?</p>

<p style="text-align: right;">Page 146</p> <p>1 A. It would have just been an 2 objective for the upcoming year, at the 3 annual review on what we would like to 4 try to see happen the next year. 5 Q. Looking down, there's 6 another chart here on this document. 7 Like some of the other charts we've been 8 looking at, correct? 9 MR. LAVELLE: Object to 10 form. 11 THE WITNESS: I mean, this? 12 BY MR. CLUFF: 13 Q. Yeah. 14 A. Yeah. Similar to the other 15 ones. 16 Q. In the second row of that 17 chart it says customer/associate 18 satisfaction. And then there's a 19 Number 5. It says, "Drive improvement in 20 the three AES questions identified for 21 focus in FY '11." 22 Do you see that? 23 A. Okay. 24 Q. Those AES questions, is that</p>	<p style="text-align: right;">Page 148</p> <p>1 page there, it says, "Opportunities build 2 collaborative relationships," right, on 3 the supervisor assessment side of the 4 page? 5 A. Yes. 6 Q. And then your supervisor 7 wrote, "Keith comes across defensive, 8 accusatory, and negative in certain 9 situations leaving others involved 10 feeling that he is resistant, 11 uncooperative, and unapproachable. This 12 serves to be an igniter of tension within 13 meetings and other situations making it 14 uncomfortable for others." 15 Do you see that? 16 A. I see it. 17 Q. Do you have any recollection 18 of what your supervisor is referring to 19 at that point in time? 20 A. At that point in time, no. 21 Q. Do you recall being in any 22 meetings that were uncomfortable for 23 other people? 24 A. No, I do not.</p>
<p style="text-align: right;">Page 147</p> <p>1 that -- the satisfaction survey that we 2 talked about earlier? 3 A. Yes. 4 Q. Okay. Do you have any 5 recollection of what these three AES 6 questions identified for focus in FY '11 7 were? 8 A. No, I don't remember what 9 that was back then. 10 Q. Let's move forward to the 11 page that ends in 50622. In the top 12 right corner it should say Page 6 of 8. 13 Do you see that? 14 A. Yes. 15 Q. Okay. And in the center, it 16 says annual performance review FY 2011. 17 Do you see that? 18 A. Okay. 19 Q. So looking at this page, do 20 you -- do you have an understanding this 21 would have been your performance review 22 for year -- fiscal year 2011? 23 A. Yes. 24 Q. Looking at the bottom of the</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. Do you recall any instances 2 where you were accusatory or negative 3 about others involved in the 4 conversation? 5 A. No. 6 Q. You have no recollection of 7 the substance of that comment? 8 A. No. 9 Q. Okay. Flip to the next 10 page. At the top it will say Page 7 of 11 8. The Bates number will be 50623. 12 A. Okay. 13 Q. Looking down at the bottom, 14 it says, "Supervisor comments on 15 development for career goals/interests." 16 Do you see that? 17 A. Yes. 18 Q. Your supervisor writes, "In 19 order for Keith to advance, he must focus 20 on improving his communication and 21 interpersonal skills. I suggest that he 22 invest in himself with attendance in a 23 course that will help him to gain 24 dexterity and grace in dealing with</p>

Page 150

1 others, to recognize how he comes across
2 to others, to become more conscious of
3 his body language and to say what he
4 needs to say without offending or
5 creating conflict."
6 Do you recall discussing
7 that with your supervisor?
8 A. I must have, if it's there.
9 Q. What do you recall about
10 that conversation?
11 A. Just what it states here.
12 Q. What were these instances of
13 offense or creating conflict that are
14 referred to in the last line?
15 MR. LAVELLE: Object to
16 form.
17 THE WITNESS: I have no idea
18 where I -- why he put that down
19 there.
20 BY MR. CLUFF:
21 Q. Do you recall ever taking a
22 course that was described or recommended
23 to you like that?
24 A. No, I don't.

Page 151

1 Q. I want to talk about some
2 policies and procedures now. You can set
3 that to the side. I'll hand you a
4 document that we're going to mark as
5 Exhibit 2.
6 (Document marked for
7 identification as Exhibit
8 Rite Aid-Frost-2.)
9 BY MR. CLUFF:
10 Q. It's a Rite Aid produced
11 document. It's been marked as Rite
12 Aid -- Rite_Aid_OMDL_0013210, which is an
13 e-mail that has an attachment. I've
14 included the attachment with the
15 document.
16 The attachment begins at the
17 same prefix ending in 0013211 through
18 0013230.
19 Looking at the cover page --
20 give me just a second to catch up with
21 you. You'll see that there's an e-mail
22 from Kirsten Dennison. Do you know that
23 name?
24 A. Yes, I do.

Page 152

1 Q. Who is Kirsten Dennison?
2 A. Well, before she got married
3 she was inventory control manager.
4 Q. Was she the inventory
5 control manager after she got married as
6 well?
7 A. Yes, but it was a different
8 last name.
9 Q. Okay. Ms. Dennison e-mails
10 you and Nick Zoltan.
11 Do you see that?
12 A. Yes, I do.
13 Q. Who is Nick Zoltan?
14 A. He was, I don't know at this
15 time, he could have been an operations
16 manager, could have been a department
17 manager.
18 Q. Also copied on this e-mail
19 is a person with the e-mail address,
20 N-W-O-J-C-I-K.
21 Do you see that?
22 A. Yes.
23 Q. Do you know what that
24 person's name was?

Page 153

1 A. I think it was Nick Wojcik.
2 I think it was one of her leads or
3 assistant managers possibly.
4 Q. Her being Kirsten?
5 A. Yes.
6 Q. Are all of the people that
7 are included on this e-mail, are they
8 from the Perryman distribution center?
9 A. Yes.
10 Q. The subject is, "Forward:
11 Quarterly narrative signoffs - Quarter 4,
12 FY 2011 - review and approve process
13 described." Do you know what that
14 subject line meant or referred to?
15 A. Not for sure.
16 Q. Do you see there's a line
17 there that says "received." And
18 underneath that, there's some underlying
19 text that says L.04.03-warehouse
20 management systems.doc?
21 A. Yes.
22 Q. What's a warehouse
23 management system?
24 A. It's what the warehouse uses

Page 154

1 to manage all of its systems. Pick
2 department, storage, replenishment,
3 shipping.
4 Q. Is warehouse a distribution
5 center or is that some --
6 A. No.
7 Q. -- different sort of --
8 A. WMS.
9 MR. LAVELLE: Object to
10 form. Again, you've got to wait
11 until the question is finished.
12 THE WITNESS: Warehouse
13 management system.
14 MR. LAVELLE: Mr. Frost, you
15 have to wait until the question
16 was finished before you answer.
17 BY MR. CLUFF:
18 Q. Yeah, we'll back it up and
19 go through it again. It's all good.
20 So you worked at the
21 Perryman distribution center. Is that
22 different from the warehouse that is
23 described in the warehouse management
24 system?

Page 155

1 A. No.
2 Q. So they're the same thing?
3 A. Warehouse management system
4 is the operations system of what operates
5 the distribution center.
6 Q. So when you were a manager
7 in the distribution center, the warehouse
8 management system is a document that
9 would have been used to govern the
10 operations of the distribution center?
11 A. It's not a document. It's a
12 system that we use. We operate that way
13 right now. We have our own management
14 warehouse system.
15 Q. If you turn the page, you'll
16 see that there's a document in the top
17 there, there is a text box. It says,
18 "Purpose: Inventory narrative."
19 Do you see that?
20 A. Yes.
21 Q. And then underneath that,
22 "Scope: Warehouse management system."
23 And the source is, "Interviews of
24 facility and corporate management and

Page 156

1 observations of processes at the
2 centers."
3 Do you see that?
4 A. Yes.
5 Q. So is this document the
6 warehouse management system or what is
7 this document that we're looking at?
8 MR. LAVELLE: Object to
9 form.
10 THE WITNESS: It's a
11 document to outline the management
12 warehouse system.
13 BY MR. CLUFF:
14 Q. Would you have been involved
15 in creating this document that outlines
16 the warehouse management system?
17 A. No.
18 Q. Do you know why Kirsten
19 would have forwarded this to you?
20 A. As an inventory, she would
21 just know if there was any changes in any
22 processes in different parts of the
23 building that we might be managing.
24 Q. Looking down at general

Page 157

1 information, at the top it says there's
2 Tim Peifley.
3 A. Yes.
4 Q. That's the general manager
5 of the Aberdeen, Maryland, Perryman DC?
6 A. Yes.
7 Q. And that's one of the
8 general managers that you previously
9 identified that you worked with?
10 A. Yes.
11 Q. Would the general manager
12 have been responsible for ensuring that
13 this warehouse management system was
14 followed at the Perryman distribution
15 center?
16 A. I don't know.
17 Q. Do you know if any of your
18 job responsibilities would have been
19 governed by this warehouse management
20 system?
21 A. No.
22 Q. Are you telling me that none
23 of your responsibilities would have been
24 governed by this or that you don't know

Page 158

1 whether they would have been governed?
2 A. This document would not
3 govern anything that I do. I contribute
4 into -- this document summarizes what I
5 do and what the other departments do.
6 Q. Understood. So if we read
7 this document, then we can understand it
8 to be a summary of the processes that
9 occurred at the Perryman distribution
10 center?
11 A. Yeah. A very small summary.
12 Q. Why do you say it's a very
13 small summary?
14 A. Because it's only a few
15 pages and we do a lot of things.
16 Q. Do you see at the bottom of
17 the page there are -- there's a page
18 number above the Bates number?
19 A. Okay.
20 Q. Okay. I'd like you to turn
21 to Page 4. At the top you'll see there's
22 a heading that says receiving. As a
23 manager in Perryman from 2003 to 2014,
24 were you responsible for overseeing

Page 159

1 receiving drugs -- receiving products at
2 the Perryman center?
3 MR. LAVELLE: Object to
4 form.
5 THE WITNESS: What's the
6 question again?
7 BY MR. CLUFF:
8 Q. Sure. While were you
9 manager at Perryman from 2003 to 2014,
10 would you have been responsible for
11 overseeing receiving at Perryman?
12 MR. LAVELLE: Object to
13 form.
14 THE WITNESS: No.
15 BY MR. CLUFF:
16 Q. No?
17 A. No.
18 Q. Who would have been
19 responsible for that?
20 A. The inbound receiving
21 manager, inbound manager.
22 Q. You were never responsible
23 for inbound receiving at Perryman between
24 2003 and 2014?

Page 160

1 A. No.
2 Q. Understood. Do you know who
3 would have been responsible for that
4 during 2003 to 2014?
5 A. We had different department
6 managers in inbound during that time
7 frame.
8 Q. Do you remember any of them?
9 A. Yes.
10 Q. Who can you remember? If
11 you can't recall, it's not critical.
12 A. Wow, this goes back.
13 Q. Seems like you are having a
14 hard time recalling. Let's move on to
15 some other --
16 A. Yeah, I just can't remember
17 a lot of the names.
18 Q. That's okay. It's not a
19 memory test. It's just whatever you can
20 recall. So let's turn to Page 4, which
21 would still be in this receiving section.
22 A. Mm-hmm.
23 Q. If you'll flip the page.
24 And do you see here on this page that

Page 161

1 you're looking at, Page 4, it's the one
2 to your right-hand side.
3 A. Okay.
4 Q. There are some bullet points
5 and then text associated with each of
6 those bullet points.
7 Do you see that?
8 A. Yes.
9 Q. In the middle, there's a
10 bullet point that begins, "The receiving
11 process over Rx receipts is identical to
12 the front-end process except for the
13 following procedures."
14 Do you see that?
15 A. Yes.
16 Q. What are Rx receipts?
17 A. Receipts that -- packing
18 slips for pharmacy.
19 Q. Okay. And it says here
20 that's identical to the front-end
21 process, correct?
22 A. Yes.
23 Q. Okay. Between 2003 and
24 2014, you were responsible for pharmacy,

<p style="text-align: right;">Page 162</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And pharmacy was abbreviated</p> <p>4 Rx in documents at Rite Aid?</p> <p>5 A. Yes.</p> <p>6 Q. So then, is this section</p> <p>7 here something that you would have been</p> <p>8 responsible for, these Rx receipts?</p> <p>9 A. No.</p> <p>10 Q. No. Do you know who would</p> <p>11 have been?</p> <p>12 A. The inbound department</p> <p>13 manager.</p> <p>14 Q. Okay. Under that line, can</p> <p>15 you see there are three indented little</p> <p>16 arrows?</p> <p>17 A. Yes.</p> <p>18 Q. The first one says --</p> <p>19 actually I want to look at the third one,</p> <p>20 I'm sorry. It says, "McKesson receipts</p> <p>21 are monitored through the full-time</p> <p>22 McKesson employee that works in the</p> <p>23 Perryman DC. Any McKesson receipt that</p> <p>24 is either an overage or shortage will be</p>	<p style="text-align: right;">Page 164</p> <p>1 distribution center?</p> <p>2 A. Well, as I understood it,</p> <p>3 that they were supposed to reconcile any</p> <p>4 shortages, outdates, overages, with --</p> <p>5 and be a liaison with our corporate buyer</p> <p>6 in Harrisburg.</p> <p>7 Q. Earlier we talked about</p> <p>8 orders by Rite Aid stores that might</p> <p>9 exceed that 5,000-unit threshold. Do you</p> <p>10 recall that?</p> <p>11 A. Yes.</p> <p>12 Q. If a Rite Aid store had</p> <p>13 their order cut to 5,000 units, they</p> <p>14 could order additional product from</p> <p>15 McKesson directly, correct?</p> <p>16 A. I don't know that.</p> <p>17 Q. Okay. Do you know if this</p> <p>18 McKesson employee had any -- any</p> <p>19 interaction with orders from -- directly</p> <p>20 from Rite Aid stores?</p> <p>21 MR. BARRIENTOS: Object to</p> <p>22 form.</p> <p>23 MR. LAVELLE: Object to</p> <p>24 form.</p>
<p style="text-align: right;">Page 163</p> <p>1 reviewed and verified by this employee.</p> <p>2 An E-form is completed by the Rx</p> <p>3 receiving office and is signed by the</p> <p>4 McKesson employee noting his agreement</p> <p>5 with the reconciliation information noted</p> <p>6 in this E-form. This E-form is provided</p> <p>7 to Rx purchasing and Rx AP department."</p> <p>8 Do you recall that there was</p> <p>9 a full-time McKesson employee that worked</p> <p>10 at the Perryman distribution center?</p> <p>11 A. Yes.</p> <p>12 Q. Was that true for the entire</p> <p>13 time period between 2003 and 2014?</p> <p>14 A. I don't know.</p> <p>15 Q. Do you recall how long there</p> <p>16 was a full-time McKesson employee at the</p> <p>17 Perryman distribution center?</p> <p>18 A. While I was managing any</p> <p>19 parts of pharmacy there was always a</p> <p>20 McKesson representative, from 2003 to</p> <p>21 2014.</p> <p>22 Q. What did you understand to</p> <p>23 be the McKesson employee's job</p> <p>24 responsibilities to be at the Perryman</p>	<p style="text-align: right;">Page 165</p> <p>1 THE WITNESS: No, I do not.</p> <p>2 BY MR. CLUFF:</p> <p>3 Q. Do you know who at Rite Aid</p> <p>4 negotiated or agreed to allow a McKesson</p> <p>5 employee to be full-time at Rite Aid</p> <p>6 facilities?</p> <p>7 MR. LAVELLE: Object to</p> <p>8 form.</p> <p>9 THE WITNESS: No, I do not.</p> <p>10 BY MR. CLUFF:</p> <p>11 Q. Do you know if there was a</p> <p>12 McKesson employee stationed at each one</p> <p>13 of Rite Aid's distribution centers or</p> <p>14 just Perryman?</p> <p>15 MR. LAVELLE: Object to</p> <p>16 form.</p> <p>17 THE WITNESS: I do not know</p> <p>18 that.</p> <p>19 BY MR. CLUFF:</p> <p>20 Q. Do you know who in the</p> <p>21 company would have been responsible for</p> <p>22 interacting with McKesson about this</p> <p>23 employee that was at the Perryman</p> <p>24 distribution center?</p>

Page 166

1 MR. LAVELLE: Object to
2 form.
3 THE WITNESS: No, I don't.
4 BY MR. CLUFF:
5 Q. Let's go to Page 6. Do you
6 see there there's a grey box that says
7 picking?
8 A. Okay.
9 Q. Is that something that would
10 have been within your job
11 responsibilities?
12 A. I would have been a super --
13 my people would have been responsible for
14 that. It would come under my umbrella.
15 Q. Okay. If you turn to
16 Page 8, still within the receiving
17 section. You're going the right way.
18 A. Oh, I have 6, then it goes
19 to 7, then I have a --
20 MR. LAVELLE: Next page.
21 THE WITNESS: It skips --
22 oh, okay. Out of sequence, all
23 right.
24 BY MR. CLUFF:

Page 167

1 Q. Maybe they are out of order.
2 We'll talk to the printer about that
3 later. Sorry about that.
4 Do you see at the top there
5 it says controls?
6 A. Yes.
7 Q. Would the controls have been
8 within your job responsibilities within
9 the category of picking?
10 A. Yes.
11 Q. Do you see in the second
12 bullet point where it says, "WMS does not
13 permit over receiving a tote"?
14 A. Yes.
15 Q. What does that mean?
16 A. I don't understand what that
17 means.
18 Q. The third bullet point says,
19 "Quality control is randomly conducted at
20 each pick area to ensure tote contents
21 match the store order assigned in the
22 system."
23 Do you see that?
24 A. Yes.

Page 168

1 Q. Do you know what that means?
2 A. Yes.
3 Q. What does it mean?
4 A. Internally and
5 building-wide, inventory control did
6 monthly store audits at random. Just
7 pick a store and pick everything -- audit
8 everything that was in that store that
9 was being shipped to them. And we also
10 in pharmacy and control drugs did random
11 audits for quality purposes.
12 Q. Let's go to Page 9. It
13 should be --
14 A. Okay.
15 Q. Do you see that where it
16 says shipping?
17 A. Yes, I do.
18 Q. Is that something that would
19 have been within your job
20 responsibilities between 2003 and 2014?
21 A. No.
22 Q. Okay. If you move forward
23 two pages to Page 10.
24 A. Okay.

Page 169

1 Q. Do you see there in the --
2 in the first full paragraph it says,
3 "Rite Aid's DC performed several
4 different procedures to discover order
5 picking errors before they are shipped to
6 the stores."
7 Do you see that?
8 A. Yes.
9 Q. The sentence -- next
10 sentence continues, "These procedures are
11 as follows: Drill downs, line checks and
12 truck audits."
13 Are those the audits that
14 you've been discussing, those -- those
15 three kinds of procedures?
16 MR. LAVELLE: Object to
17 form.
18 THE WITNESS: So what's the
19 question? I'm reading it, so
20 what's the question?
21 BY MR. CLUFF:
22 Q. I'm just trying to
23 understand if these are the kind of
24 audits that you've been discussing when

Page 170

1 you previously talked about audits.
2 A. They are some, yes.
3 Q. Okay. Do you know what a
4 limbo location is?
5 A. As I understand it, it's the
6 location that the -- the system thinks
7 something is there, but there is nothing
8 there.
9 Q. Were you -- did you have any
10 responsibility for limbo locations when
11 you were in Perryman between 2003 and
12 2014?
13 A. Not me personally, no.
14 Q. Did you ever interact with
15 anybody from Cardinal Health when you
16 were the manager at the Perryman
17 distribution center between 2003 and
18 2014?
19 A. No.
20 Q. You previously mentioned
21 McKesson. Did you ever interact with
22 anybody from McKesson between 2003 to
23 2014?
24 A. Just the on-site

Page 171

1 representative.
2 Q. Do you recall who that would
3 have been?
4 A. It was Todd. I don't know
5 what his last name is.
6 Q. Was there somebody at the
7 Perryman distribution center whose
8 responsibility it was to interact with
9 the McKesson employee?
10 A. Well, the receiving
11 department.
12 Q. But you don't recall who the
13 manager of that department was?
14 MR. LAVELLE: Objection.
15 Asked and answered.
16 THE WITNESS: We had
17 multiple managers. No one in
18 particular. It was just he was on
19 the floor while they were
20 receiving McKesson product.
21 BY MR. CLUFF:
22 Q. Did you ever interact with
23 anybody from AmerisourceBergen between
24 2003 and 2014?

Page 172

1 A. I don't remember anything
2 from AmerisourceBergen between 2003 and
3 2014.
4 Q. Do you recall interacting
5 with any other wholesale distributors
6 between 2003 and 2014?
7 A. No, I do not.
8 Q. You can set that document
9 aside.
10 MR. LAVELLE: Counsel, can
11 we take a break?
12 MR. CLUFF: Yeah.
13 THE VIDEOGRAPHER: Off the
14 record at 12:09 p.m.
15 - - -
16 (Lunch break.)
17 - - -
18 AFTERNOON SESSION
19 - - -
20 THE VIDEOGRAPHER: We are
21 back on the record at 12:46 p.m.
22 BY MR. CLUFF:
23 Q. Okay. Welcome back from
24 lunch, Mr. Frost. We're back on the

Page 173

1 record. So you're -- you're under oath
2 again.
3 I want to go through some
4 more documents with you this afternoon.
5 One of the things that I'm curious about
6 is vault access or cage access for the
7 controlled products. Is that something
8 that you understand?
9 A. Yes.
10 Q. Okay. Would you refer to
11 the area where controlled substances were
12 stored as the vault or the cage or what
13 term would you use?
14 MR. LAVELLE: Object to
15 form.
16 THE WITNESS: The cage.
17 BY MR. CLUFF:
18 Q. And was restricting or
19 granting access to the cage one of your
20 job responsibilities?
21 A. Yes.
22 Q. And that would have been
23 during the time that you were the
24 pharmacy manager from 2003 to 2014?

Page 174

1 A. Yes.

2 Q. What was the process for

3 approving somebody to get access to the

4 cage?

5 A. Initially everybody had to

6 have a background check through law

7 enforcement, come back competitive,

8 before they'd be granted access.

9 Q. Did you say come back

10 competitive before they would be granted

11 access?

12 A. Yes. Competitive means --

13 yes.

14 Q. So law enforcement would

15 clear their background check, and then

16 they could be granted access?

17 A. Whatever the law enforcement

18 agencies or whatever background checks

19 they made.

20 Q. Do you recall creating a

21 procedure for granting cage access at any

22 point in your time as the pharmacy

23 manager?

24 A. It was not typed up. It was

Page 175

1 a verbal procedure.

2 Q. What was the verbal

3 procedure?

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 If they were going to work

Page 176

1 there, we would send them to security or

2 security or AP would give them a PIN

3 number to use to scan their badge and

4 input their PIN number to get into the

5 cage.

6 Q. I'll hand you a document

7 that I marked as Frost Exhibit 3.

8 (Document marked for

9 identification as Exhibit

10 Rite Aid-Frost-3.)

11 BY MR. CLUFF:

12 Q. It was produced with Bates

13 Number Rite_Aid_OMDL_0023217.

14 This is a short e-mail. Do

15 you see there at the bottom, Marian Wood

16 writes to you and copies -- apparently

17 it's herself, [REDACTED]@RiteAid.com?

18 A. Right.

19 Q. In this time period in 2010,

20 what was the relationship between you and

21 Marian Wood in terms of supervision?

22 A. I believe Marian Wood was

23 the DEA coordinator at the time.

24 Q. Would she have been working

Page 177

1 under you in the pharmacy department?

2 A. Yes.

3 Q. She writes, "Keith, please

4 fill out the attached and turn into HR,

5 (Nelly), I will send the request. Kim

6 and I never got around to creating a

7 procedure for this."

8 Do you see that?

9 A. Yes, I do.

10 Q. Do you recall why she was

11 asking you to fill out an attached form

12 and turn it into -- to HR?

13 A. I don't know exactly what

14 this is for.

15 Q. Do you see where she writes;

16 "Kim and I never got around to creating a

17 procedure for this"?

18 A. Yes, I do.

19 Q. Do you know what that refers

20 to?

21 A. No, I don't.

22 Q. Is it possible that she's

23 talking about the procedure for granting

24 cage access that you just discussed?

Page 178

1 MR. LAVELLE: Object to
2 form.
3 THE WITNESS: It might have
4 been possible in the sequence of
5 events to get access.
6 BY MR. CLUFF:
7 Q. As part of
8 AmerisourceBergen's -- sorry, Rite Aid's
9 regulatory and compliance obligations,
10 was restricting cage access to only
11 approved people part of the -- the
12 responsibility?
13 MR. LAVELLE: Object to
14 form.
15 THE WITNESS: Rite Aid, I
16 don't know anything about Rite
17 Aid. The distribution center,
18 which was the cage, that Marian
19 and I managed, it was our
20 responsibility to give access to
21 people in the cage.
22 BY MR. CLUFF:
23 Q. Was restricting access part
24 of your responsibility at the Perryman

Page 179

1 distribution center to comply with the --
2 the regulatory obligations that Rite Aid
3 has?
4 MR. LAVELLE: Object to
5 form.
6 THE WITNESS: No.
7 BY MR. CLUFF:
8 Q. So if people who didn't have
9 approved cage access were in the
10 controlled cage, that wouldn't be a DEA
11 violation?
12 MR. LAVELLE: Object to
13 form.
14 THE WITNESS: DEA violation?
15 No.
16 BY MR. CLUFF:
17 Q. How about like a regulatory
18 obligation -- or a violation, excuse me?
19 A. No.
20 Q. I'm going to hand you a
21 document that was produced by Rite Aid.
22 Rite_Aid_OMDL_0023287.
23 (Document marked for
24 identification as Exhibit

Page 180

1 Rite Aid-Frost-4.)
2 BY MR. CLUFF:
3 Q. Here again at the bottom you
4 see Marian Wood writes to you?
5 A. Mm-hmm.
6 Q. And the subject is cage
7 access?
8 A. Yes.
9 Q. It says, "Keith, we need to
10 discuss the cage access list. I believe
11 there are folks that should be removed."
12 Do you have any recollection
13 of why she would want some folks removed?
14 A. No.
15 Q. Do you have any concerns
16 that there are people who might have cage
17 access that should be removed?
18 A. No.
19 Q. What would be a reason for
20 removing a privilege cage access?
21 A. I don't know what her reason
22 was back in 2004.
23 Q. I believe that e-mail was
24 written in 2010. Do you see that?

Page 181

1 A. Oh, okay. I was looking at
2 before that.
3 Q. Yeah. It looks like this is
4 from June 4, 2010.
5 How about in 2010? Do you
6 have any recollection of why people may
7 have had their cage access revoked in
8 2010?
9 A. It may be more than needed.
10 Q. I think you talked about
11 earlier in the process of granting
12 authorization for people to access the
13 cage, they had to sign some paperwork; is
14 that right?
15 A. What -- I don't understand
16 what paperwork, what -- what are you
17 talking about?
18 Q. Were -- were associates who
19 received access to the cage required to
20 sign any paperwork?
21 A. If they received training.
22 Q. Okay. What was that
23 document they were required to sign about
24 the training?

Page 182

1 A. We had a number of training
2 documents.
3 Q. Like what?
4 A. Trash removal, excessive
5 order monitoring.
6 Q. What was the training that
7 they received about excessive order
8 monitoring?
9 A. They were showed on-the-job
10 training on how to pick, how the
11 Pick-to-Light system worked, what to do
12 if a certain number came up on the light
13 and it wasn't what it was supposed to be.
14 And how they were supposed to report it
15 to a leader and manager.
16 Q. Did they ever receive any
17 training that instructed them to report
18 suspicious orders to the DEA?
19 A. No.
20 Q. Did they ever receive any
21 training that they were supposed to
22 report excessive orders to the DEA?
23 A. No.
24 Q. Were associates at Rite Aid

Page 183

1 required to sign a responsibility form
2 related to reporting drug diversion?
3 A. Yes.
4 Q. What was the basis of
5 requiring them to sign that document?
6 MR. LAVELLE: Object to
7 form.
8 THE WITNESS: I don't -- I
9 don't understand what you mean by
10 basis.
11 BY MR. CLUFF:
12 Q. Do you recall why employees
13 were required to sign that form?
14 A. Yes. We didn't -- we wanted
15 to make sure that all associates were
16 diligent, and -- and aware that -- to
17 prevent any theft, stolen or missing
18 control drugs were not -- were not
19 happening.
20 Q. What about suspicious orders
21 as a form of diversion, were employees
22 required to report that?
23 MR. LAVELLE: Object to
24 form.

Page 184

1 THE WITNESS: They were
2 required to tell their assistant
3 manager or lead if there is
4 excessive ordering in their line.
5 When they went to pick a product,
6 if it was more than it was
7 supposed to and they had to short
8 it, they were to tell their lead
9 or assistant manager.
10 BY MR. CLUFF:
11 Q. But were they required to
12 report it to the DEA?
13 A. No.
14 Q. How about excessive orders,
15 were they required -- were associates
16 required to report those orders to the
17 DEA?
18 A. No.
19 Q. I'm going to hand you an
20 e-mail and attachment that we're going to
21 mark as Exhibit 5.
22 (Document marked for
23 identification as Exhibit
24 Rite Aid-Frost-5.)

Page 185

1 BY MR. CLUFF:
2 Q. It's been produced as
3 Rite_Aid_OMDL_0012113. And the
4 attachment is 0012114.
5 Do you see there the cover
6 document is an e-mail?
7 A. Yes.
8 Q. The original e-mail is
9 written by Julie DeLuca. Do you see
10 that?
11 A. Okay.
12 Q. Do you know who Julie DeLuca
13 is?
14 A. No, I don't know who she is.
15 Q. And it looks like Julie
16 DeLuca writes to a person with an e-mail
17 address [REDACTED]@riteaid. Do you know
18 who C. Guthrie is?
19 A. I do.
20 Q. Whose -- and it looks like
21 at the top it's spelled out in full
22 Connie Guthrie. Do you know who Connie
23 Guthrie is?
24 A. Yes.

Page 186

1 Q. Who's that?

2 A. She was at the time senior

3 human relations, human resources manager

4 in the DC 10.

5 Q. And it looks like Connie

6 forwards you a document called drug

7 diversion.docx on January 18, 2011. Do

8 you see that?

9 A. Yes, I do.

10 Q. Then she asks you, "How does

11 this look," right?

12 A. Yes.

13 Q. If you turn the page that

14 you're looking at over on the back.

15 There is a Rite Aid handout. It says

16 Section 30 -- 1301.91, employee

17 responsibility to report diversion.

18 Okay?

19 A. Yes.

20 MR. LAVELLE: Object to

21 form.

22 BY MR. CLUFF:

23 Q. Do you recall why Connie was

24 asking you how this document looked?

Page 187

1 A. Why she -- why she did it

2 or?

3 Q. Why she was forwarding it to

4 you and asking you how it looked?

5 A. To see if it made sense.

6 Q. What does that mean?

7 A. That the wording on it

8 was -- was correct. That maybe she left

9 something out, or if it applied to how we

10 have been doing drug diversion, and

11 simplify the process. Just to -- to use

12 it as another form of document that the

13 employees -- to understand what drug

14 diversion was.

15 Q. Let's look at the text of

16 this document. In the first -- first

17 paragraph it says, "An employee who has

18 knowledge of drug diversion from his

19 employer by a fellow employee has an

20 obligation to report such information to

21 a responsible security official of the

22 employer."

23 Do you see that?

24 A. Yes, I do.

Page 188

1 Q. The employer there referred

2 to is Rite Aid; is that right?

3 MR. LAVELLE: Object to

4 form.

5 THE WITNESS: I don't know.

6 It just says the employer. So

7 it's in our distribution center.

8 BY MR. CLUFF:

9 Q. Okay. The last line it says

10 a responsible security official. Who

11 would that be at the Maryland

12 distribution center?

13 A. Okay. So where is that at

14 here?

15 Q. The last line of the first

16 paragraph.

17 A. Yeah, it would be like an

18 associate asset protection, one of our

19 guards.

20 Q. So if an employee became

21 aware of drug diversion from -- by a

22 fellow employee, they were supposed to

23 report it to asset protection?

24 A. There would be a vehicle for

Page 189

1 them to be able to do that.

2 Q. What was that vehicle?

3 MR. CLUFF: The record

4 reflects that he held up the -- the

5 document --

6 THE WITNESS: Right.

7 MR. CLUFF: -- that we've

8 marked as Exhibit 5.

9 BY MR. CLUFF:

10 Q. I'm not really clear what

11 you mean by holding up the document

12 though.

13 A. Well, it -- it's allowing

14 the associate to know that they should

15 not hold any drug diversion to

16 themselves, but they are to let somebody

17 know, whether it's asset protection, a

18 lead or a manager, that's what it is

19 meant to be, convey.

20 Q. So you said to let somebody

21 know whether it's asset protection, a

22 lead or a manager. I'm just trying to

23 understand who, who would be the people

24 or persons that an employee was supposed

Page 190

1 to report drug diversion to?
2 MR. LAVELLE: Object to
3 form.
4 THE WITNESS: All of the
5 above. All of the above. If an
6 associate saw something that was
7 missing out of a case or
8 something -- this applied to
9 pharmacy as well. I mean we had
10 these posters all over the
11 pharmacy, not just the cage.
12 They were -- they were told
13 to let somebody know if something
14 was missing.
15 BY MR. CLUFF:
16 Q. Okay. Then you said this
17 was to let them know that there was a
18 vehicle to do that. What -- what was the
19 vehicle through which they would -- they
20 would make these kinds of complaints or
21 report this kind of information?
22 MR. LAVELLE: Object to
23 form.
24 THE WITNESS: They would

Page 191

1 speak it.
2 BY MR. CLUFF:
3 Q. So was there any sort of a
4 written report created if the employee
5 notified a security official of potential
6 diversion?
7 A. No.
8 Q. Never?
9 A. No.
10 Q. Okay. In the next paragraph
11 it says, "The employer shall treat such
12 information as confidential and shall
13 take all reasonable steps to protect the
14 confidentiality of the information and
15 identity of the employee furnishing
16 information."
17 Do you see that?
18 A. I do.
19 Q. Okay. Reading that
20 paragraph, do you have any understanding
21 that a written report of diversion would
22 have been created if an employee reported
23 it?
24 MR. LAVELLE: Object to

Page 192

1 form.
2 THE WITNESS: If we reported
3 it to security, I don't know what
4 they did with it.
5 BY MR. CLUFF:
6 Q. Okay. Did you ever have any
7 occasion to report diversion that you're
8 aware of?
9 A. No.
10 Q. Do you know if there was any
11 diversion ever reported out of the
12 pharmacy department?
13 A. No, I do not.
14 Q. Do you understand there's a
15 connection between preventing diversion
16 and the public interest?
17 MR. LAVELLE: Object to
18 form.
19 THE WITNESS: No.
20 BY MR. CLUFF:
21 Q. Is it your testimony that
22 you don't have an understanding about
23 that fact, or that there is no connection
24 between preventing diversion and serving

Page 193

1 the public interest?
2 MR. LAVELLE: Object to
3 form.
4 THE WITNESS: I do not know
5 that there's a connection between
6 diversion and protecting the
7 public interest.
8 BY MR. CLUFF:
9 Q. Do you know if Rite Aid,
10 your current employer, is committed to
11 protecting the public interest?
12 MR. LAVELLE: Object to
13 form.
14 THE WITNESS: I'm sure they
15 are.
16 BY MR. CLUFF:
17 Q. So then, are they committed
18 to reporting diversion whenever they
19 encounter it?
20 MR. LAVELLE: Object to
21 form.
22 THE WITNESS: What was the
23 question again?
24 BY MR. CLUFF:

Page 194

1 Q. If they're committed to
2 protecting the public interest, are they
3 committed to reporting diversion whenever
4 they encounter it?
5 MR. LAVELLE: Object to
6 form.
7 THE WITNESS: So I don't
8 understand who's reporting it
9 whenever they encounter it.
10 BY MR. CLUFF:
11 Q. Rite Aid?
12 MR. LAVELLE: Same.
13 THE WITNESS: Rite Aid, the
14 distribution center?
15 BY MR. CLUFF:
16 Q. We just looked at Exhibit 5,
17 right?
18 A. Mm-hmm.
19 Q. It says, "An employee who
20 has knowledge of drug diversion has an
21 obligation to report such information to
22 responsible security official of the
23 employer," correct?
24 A. Yes.

Page 195

1 Q. Would you agree with me that
2 all associates at Rite Aid have an
3 obligation to report diversion when they
4 become aware of it?
5 A. Yes.
6 Q. So when I ask if Rite Aid is
7 committed to reporting diversion, I mean
8 every associate at Rite Aid and the
9 company. Do you have an understanding of
10 whether or not Rite Aid is committed to
11 reporting diversion when it becomes aware
12 of it?
13 MR. LAVELLE: Object to
14 form.
15 THE WITNESS: I know our
16 distribution center is committed
17 to diversion.
18 BY MR. CLUFF:
19 Q. But not reporting suspicious
20 orders, correct?
21 MR. LAVELLE: Object to
22 form.
23 THE WITNESS: That's not
24 correct.

Page 196

1 BY MR. CLUFF:
2 Q. While you were the manager
3 of the pharmacy department at the
4 Perryman distribution center between 2003
5 to 2014, did you ever report a suspicious
6 order to the DEA?
7 MR. LAVELLE: Object to
8 form. Objection, asked and
9 answered.
10 THE WITNESS: I don't
11 understand when you said, object
12 to what? Asked and answered?
13 MR. LAVELLE: You can ask
14 for the question to be repeated or
15 you can answer the question or you
16 can tell him if you don't
17 understand the question.
18 I objected to the form of
19 the question.
20 THE WITNESS: Okay. Okay.
21 So repeat your question, please.
22 BY MR. CLUFF:
23 Q. While you were the manager
24 of the pharmacy department at the

Page 197

1 Perryman distribution center between 2003
2 and 2014, did you ever report a
3 suspicious order to the DEA?
4 MR. LAVELLE: Object to
5 form. Objection, asked and
6 answered.
7 THE WITNESS: No.
8 BY MR. CLUFF:
9 Q. I'm going to hand you a copy
10 of a document that was produced by Rite
11 Aid Rite_Aid_OMDL_0013963 and the
12 attachment to that document which begins
13 at Rite_Aid_OMDL_0013967 to 0013968.
14 (Document marked for
15 identification as Exhibit
16 Rite Aid-Frost-6.)
17 BY MR. CLUFF:
18 Q. Did you get a chance to
19 review that document?
20 A. I did.
21 Q. Let's start at the bottom of
22 the top page. That's an e-mail from Kim
23 Brown to a number of individuals. The
24 subject line is "DEA CFRs

<p style="text-align: right;">Page 198</p> <p>1 employers/employees." 2 Do you see that? 3 A. Yes, I do. 4 Q. And Kim Brown writes, "All 5 of our cage associates and any associate 6 used temporarily in the cage have to sign 7 an acknowledgment for drug diversion." 8 Do you see that? 9 A. Yes, I do. 10 Q. She writes, "The same 11 verbiage shown below for C.F.R. 1301.91 12 is in our policy verbatim." 13 Do you see that? 14 A. Yes. 15 Q. If you turn back two pages, 16 it looks like she has copied some 17 portions of the C.F.R. 18 Do you see that? On the 19 page to your right? 20 A. The one on the back of the 21 first page or the second page? 22 Q. The second page. 23 A. Okay. 24 Q. Do you see some selections</p>	<p style="text-align: right;">Page 200</p> <p>1 an employee who has knowledge of a drug 2 diversion from his employer by a fellow 3 employee has an obligation to report such 4 information to a responsible security 5 official of the employer." 6 Do you see that? 7 A. Yes, I see that. 8 Q. Did you ever talk to anybody 9 from DEA about who a responsible security 10 official of the employer should be? 11 A. No. 12 Q. Do you know if any employees 13 have ever been drug -- or cage access 14 without having signed or acknowledging 15 their responsibilities under 1301.91? 16 MR. LAVELLE: Object to 17 form. 18 THE WITNESS: No. 19 BY MR. CLUFF: 20 Q. When an employee was given 21 access to the controlled cages, where 22 would documentation of that access be 23 kept? 24 A. The asset protection office</p>
<p style="text-align: right;">Page 199</p> <p>1 from the Code of Federal Regulations 2 there? 3 A. Yes. 4 Q. Look at Section 1301.91, 5 "Employee responsibility to report drug 6 diversion." 7 A. Yes. 8 Q. And there it reads, "Reports 9 of drug diversion by fellow employees is 10 not only a necessary part of an overall 11 employee security program but also serves 12 the public interest at large." 13 Do you see that? 14 A. Yes. 15 Q. So would you agree with me 16 now that at least that DEA believed that 17 reports of drug diversion served the 18 public interest at large? 19 MR. LAVELLE: Object to 20 form. 21 THE WITNESS: Yes. 22 BY MR. CLUFF: 23 Q. That section continues. "It 24 is, therefore, the position of DEA that</p>	<p style="text-align: right;">Page 201</p> <p>1 had it. Plus, I had a list of people, 2 and myself and Marian Woods, of the 3 people who went through background 4 checks, three-year background checks. 5 Q. Were there any instances 6 where people were given access without 7 having gone through the necessary 8 background check and other information? 9 MR. LAVELLE: Object to 10 form. 11 THE WITNESS: Yeah. They 12 had to be escorted if they were. 13 BY MR. CLUFF: 14 Q. How would they have been 15 escorted? 16 A. They would have been with an 17 associate there to work alongside them 18 for the day or an hour or so. 19 Q. Would they have -- would 20 they have been included on this list of 21 people who were given access? 22 A. No. 23 Q. How would anybody have known 24 that they were allowed to be in the cage</p>

<p style="text-align: right;">Page 202</p> <p>1 then?</p> <p>2 A. We have, as you enter the</p> <p>3 cage -- it applies to auditors as well --</p> <p>4 there was an escort list there, an</p> <p>5 associate that had access to be listed</p> <p>6 there in A, and then the B signature</p> <p>7 would be for the person that was to be</p> <p>8 escorted, and the person that had access</p> <p>9 would have to be with that person the</p> <p>10 entire time. And then you put the date</p> <p>11 and the time that they entered the cage</p> <p>12 and then a date and time that they left</p> <p>13 the cage.</p> <p>14 Q. So if I understand you</p> <p>15 correctly, there was essentially a</p> <p>16 sign-in sheet outside of the cage?</p> <p>17 A. No. There was a sign-in</p> <p>18 sheet inside the cage.</p> <p>19 Q. Inside the cage.</p> <p>20 Do you know where that</p> <p>21 sign-in sheet was kept after it was</p> <p>22 filled up?</p> <p>23 A. No. Destroyed it.</p> <p>24 Q. So other than that, other</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. Would that refer to the</p> <p>2 controlled substances cage we've been</p> <p>3 discussing?</p> <p>4 A. Yes.</p> <p>5 Q. Looking at the bottom,</p> <p>6 Marian Wood writes, "Keith, I would</p> <p>7 recommend taking off the following people</p> <p>8 from cage access: Chad Mitchell and</p> <p>9 Nikki Williams."</p> <p>10 Do you know who either Chad</p> <p>11 Mitchell or Nikki Williams were?</p> <p>12 MR. LAVELLE: Object to</p> <p>13 form.</p> <p>14 THE WITNESS: I know who</p> <p>15 Chad Mitchell is -- was.</p> <p>16 BY MR. CLUFF:</p> <p>17 Q. Who is Chad Mitchell?</p> <p>18 A. Industrial engineer.</p> <p>19 Q. So at one point he would</p> <p>20 have been given challenge access?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know what that would</p> <p>23 have been for?</p> <p>24 A. To ensure that the cage met</p>
<p style="text-align: right;">Page 203</p> <p>1 than that sign-in sheet, was there any</p> <p>2 other record of who was given access to</p> <p>3 the -- the controlled cages?</p> <p>4 A. Security kept a list of all</p> <p>5 the people that had access to the</p> <p>6 security cage.</p> <p>7 (Document marked for</p> <p>8 identification as Exhibit</p> <p>9 Rite Aid-Frost-7.)</p> <p>10 BY MR. CLUFF:</p> <p>11 Q. Let me give you another</p> <p>12 document. We're going to mark it as</p> <p>13 Exhibit 7. It's been produced as</p> <p>14 Rite_Aid_OMDL_0011927 to 0011928.</p> <p>15 This is a two-page document.</p> <p>16 But if you look at the back of the</p> <p>17 document in front of you, you'll see that</p> <p>18 it's just My Rite Aid symbol. And on the</p> <p>19 front it appears to be an e-mail chain</p> <p>20 between you and Ms. Marian Wood, correct?</p> <p>21 A. Okay -- yes.</p> <p>22 Q. The subject is cage access.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 205</p> <p>1 specifications and if there was any</p> <p>2 repair work in there, he could recommend</p> <p>3 how to get it repaired.</p> <p>4 Q. Speaking of specifically</p> <p>5 Chad. The next e-mail up you write back</p> <p>6 to Ms. Wood and say, "I already took off</p> <p>7 Chad's name last month."</p> <p>8 Do you know why she would be</p> <p>9 asking for his name to be removed if you</p> <p>10 already took it off?</p> <p>11 MR. LAVELLE: Object to</p> <p>12 form.</p> <p>13 THE WITNESS: No, I don't</p> <p>14 know.</p> <p>15 BY MR. CLUFF:</p> <p>16 Q. Going back to Ms. Woods'</p> <p>17 original e-mail to you. She continues,</p> <p>18 "Also there is a Jesse Jones on the</p> <p>19 access list, but I don't remember giving</p> <p>20 him access. I can't find any paperwork</p> <p>21 on a background check for him. Did you</p> <p>22 approve him? He is listed as a lead but</p> <p>23 I don't know where."</p> <p>24 Do you see that?</p>

Page 206

1 A. Yes.
2 Q. Moving up in the chain about
3 Mr. -- Mr. Jones, you write, "Don't know
4 a Jesse Jones." Do you have any
5 recollection today who Jesse Jones was?
6 A. No, I do not, no.
7 Q. Moving up the chain again,
8 Marian replies to you and says, "Chad's
9 name is still on the list."
10 Do you know why his name
11 still would have been on the list if you
12 allegedly took it off the month before?
13 MR. LAVELLE: Object to
14 form.
15 THE WITNESS: It could have
16 accidentally printed on the list
17 before it was removed.
18 BY MR. CLUFF:
19 Q. And then she asks, "My
20 question was did you authorize Jesse
21 Jones?"
22 Do you see that?
23 A. Do you mean did you approve
24 him, is that what that -- this means?

Page 207

1 Oh okay. Yes, I see that.
2 Q. And then you write back to
3 her and say, "I would not authorize
4 someone I don't know."
5 Do you see that at the top?
6 A. Yes.
7 Q. So according to this e-mail
8 chain, there is some person named Jesse
9 Jones who has cage access, but no one
10 knows how that person got there?
11 MR. LAVELLE: Object to
12 form.
13 THE WITNESS: No, not
14 necessarily.
15 BY MR. CLUFF:
16 Q. What do you mean not
17 necessarily?
18 A. We -- Marian and I approved
19 everybody -- all the names that were
20 posted to get access. Now, part of
21 security's responsibility is to send us
22 the list of people that they think
23 should -- has access to the list and we
24 can delete their names before we post it.

Page 208

1 And that's what we would do.
2 Q. Jesse Jones is on the access
3 list, right?
4 MR. LAVELLE: Object to
5 form.
6 BY MR. CLUFF:
7 Q. At the time that Marian
8 writes this e-mail, Jesse Jones is on the
9 access list?
10 A. According to what she said.
11 Q. And she doesn't remember
12 giving him access, right?
13 A. That's what she said.
14 Q. And you don't even know who
15 Jesse Jones is, do you?
16 A. That's what I said there.
17 Q. So how did -- how would this
18 person have gotten access to the cage?
19 A. They wouldn't have had
20 access to the cage. They might have been
21 on the list, but they didn't have access
22 to the cage.
23 Q. If they are on the list,
24 can't they have access?

Page 209

1 A. No.
2 Q. How so?
3 A. As I explained to you a few
4 minutes ago, Marian and I approved
5 anybody that was supposed to be on the
6 access list. When security sent names
7 and came up with a list, their name could
8 have inadvertently systemically got put
9 on the list, control access cage list,
10 because we have people who get approval
11 on badges. And it is a manual system
12 where security goes in there and scans
13 who has access to the pharmacy area and
14 the cage area.
15 Well, part of my
16 responsibility and Marian's was every
17 month, we got -- went over the whole
18 entire pharmacy access list and the cage
19 access list, and deleted any names and
20 highlighted names, gave it back to
21 security, said these are the following
22 people that have access, to make sure
23 that only the people that worked there
24 had access. So Jesse names -- Jesse

Page 210

1 James came out on the thing, we would
2 have discovered it like Marian found out.
3 We would have deleted the name before we
4 post it, gave it back to security and the
5 name would have been taken off the access
6 list.
7 Q. So the -- the goal of this
8 correspondence was to make sure that
9 nobody was on the list unless they were
10 supposed to have access, right?
11 A. Correct.
12 Q. But we already know from
13 this document that you thought you had
14 taken Chad Mitchell's name off a month
15 ago and then his name was still on the
16 list, correct?
17 A. Yes.
18 Q. Do you see that name Nikki
19 Williams?
20 A. Yes.
21 Q. Okay. Do you recall if
22 Nikki Williams' name was taken off the
23 list at this point?
24 A. No, I do not recall.

Page 211

1 Q. Do you see your e-mail in
2 the center there that says -- dated
3 June 30, 2010, where you say, "Will take
4 off Nikki"?
5 A. Okay.
6 Q. So you were committed to
7 taking Nikki off, right?
8 MR. LAVELLE: Object to
9 form.
10 THE WITNESS: Yes.
11 BY MR. CLUFF:
12 Q. And that's because she no
13 longer should have had access?
14 A. I don't know what the reason
15 was -- what the reason was back in 2010.
16 Q. Regardless of the reason,
17 she was no longer supposed to have
18 access, correct?
19 A. Correct.
20 Q. Okay. And if she had
21 access, even though she was not -- if she
22 was on the list, even though she didn't
23 have access, would that violate Rite
24 Aid's policy?

Page 212

1 MR. LAVELLE: Object to
2 form.
3 THE WITNESS: Distribution
4 center says we would only put
5 people in the cage that had access
6 to the cage after going through a
7 year -- three-year background
8 check.
9 (Document marked for
10 identification as Exhibit
11 Rite Aid-Frost-8.)
12 BY MR. CLUFF:
13 Q. Okay. I'm going to hand you
14 a two-page document that's been produced
15 by Rite Aid as Rite_Aid_OMDL_0003533 to
16 3534. The second page is on the back of
17 the document.
18 A. Okay.
19 Q. If you can look at the
20 bottom e-mail that bleeds over onto the
21 second page. Marian Wood writing to you
22 and a group of other people, including
23 Larry Ringgold and N. Williams.
24 Do you see that?

Page 213

1 A. Yes.
2 Q. Who is N. Williams?
3 A. Nathan Williams. He is the
4 security manager -- security manager.
5 Q. Who is Larry Ringgold?
6 A. At the time he was a
7 supervisor that worked for Nathan
8 Williams.
9 Q. Do you see that Ms. Wood
10 writes, "Please remove the following
11 people from cage access: Chad Mitchell,
12 Nikki Williams"?
13 A. Yes.
14 Q. Nikki Williams is the same
15 person you agreed to take off the list on
16 Wednesday, June 30th, correct, that was
17 in Exhibit 7?
18 A. Yes.
19 Q. On July 1st, Larry Ringgold
20 says, "No problem. I will take care of
21 it."
22 Do you see that?
23 A. Yes, I do.
24 Q. So both you and Mr. Ringgold

Page 214

1 were going to take care of taking Nikki
2 Williams off the list, right?
3 A. I instructed Larry to take
4 the names off. He was supposed to take
5 the names off the list.
6 Q. Moving up to the top e-mail
7 there that's from Ms. Wood to you, Keith
8 Frost. It's dated 2010-08-09, which
9 would be August 9th, right?
10 She writes, "Keith, I am not
11 sure how this is happening, but Nikki
12 Williams was taken off the cage access
13 list back on July 1st. Today she has
14 been scanning in and out of the cage.
15 How can she have access and not be on the
16 list?"
17 Do you see that?
18 A. Yes.
19 Q. Do you have an answer for
20 that question?
21 MR. LAVELLE: Object to
22 form.
23 THE WITNESS: Yeah, probably
24 Larry made a mistake and didn't

Page 215

1 take her name off the list like he
2 should have.
3 BY MR. CLUFF:
4 Q. So she wasn't supposed to be
5 in the cages anymore, correct?
6 MR. LAVELLE: Object to
7 form.
8 THE WITNESS: Yes, according
9 to this she should not have.
10 BY MR. CLUFF:
11 Q. But she was still scanning
12 in and out of the cages that holds
13 controlled substances?
14 MR. LAVELLE: Object to
15 form.
16 THE WITNESS: I don't know
17 what month this was -- Marian was
18 referring to. It could have been
19 the last day of July -- or June or
20 July.
21 BY MR. CLUFF:
22 Q. Ms. Wood writes, "Nikki
23 Williams was taken off the cage access
24 list back on July 1."

Page 216

1 A. Okay.
2 Q. And then, the date of this
3 e-mail is August 9th. "Today she has
4 been scanning in and out of the cage."
5 So a month and nine days
6 later she's still scanning in and out of
7 the cage, correct?
8 A. Okay. So maybe she did,
9 yeah.
10 Q. What's the purpose of
11 preventing people from accessing the
12 controlled substances cage if they don't
13 have access?
14 MR. LAVELLE: Object to
15 form.
16 THE WITNESS: Repeat the
17 question please.
18 BY MR. CLUFF:
19 Q. Sure. Let me ask it a
20 little more specifically.
21 A. Okay.
22 Q. Does Rite Aid restrict the
23 people who have access to the controlled
24 substances cage in order to prevent

Page 217

1 diversion?
2 MR. LAVELLE: Object to
3 form.
4 THE WITNESS: The DC 10 has
5 a list of names that have
6 authorized access into the cage
7 due to the -- due to the work
8 that's performed. And limit to
9 those people.
10 We have people that have
11 background checks that used to
12 work in the cage, work in other
13 departments, but are no longer
14 needed there. They still have
15 valid background checks. So the
16 list limits the amount of people
17 that we have working in the cage.
18 BY MR. CLUFF:
19 Q. That wasn't quite the
20 question that I -- that I asked.
21 Earlier we talked about that
22 Rite Aid is -- has regulatory
23 responsibility as a registrant, correct?
24 A. Yes.

Page 218

1 Q. And part of those are to
2 maintain effective controls to prevent
3 diversion?
4 A. Yes.
5 Q. My question is, in your
6 experience as a manager in the -- excuse
7 me -- the Perryman distribution center,
8 whether restricting cage access was apart
9 of Rite Aid's efforts to comply with the
10 requirement to maintain effective
11 controls to prevent diversion?
12 MR. LAVELLE: Object to
13 form.
14 THE WITNESS: Part of our
15 internal procedures was to have a
16 control access list to limit a
17 number of people working in the
18 control cage to only those that
19 had background checks.
20 BY MR. CLUFF:
21 Q. And was that part of Rite
22 Aid's efforts to maintain effective
23 controls to prevent diversion?
24 MR. LAVELLE: Object to

Page 219

1 form.
2 THE WITNESS: It was one of
3 our security measures to keep the
4 people that were trained properly
5 into the cage.
6 BY MR. CLUFF:
7 Q. Why were you concerned about
8 keeping people out of the cage if they
9 weren't trained properly?
10 A. Well, they wouldn't know
11 what they were doing. Only trained
12 people that had access to the cage were
13 allowed into the cage.
14 Q. If they didn't know what
15 they were doing, wasn't it possible that
16 they could engage in diversion?
17 A. No.
18 Q. Were people ever given
19 access to the cages before background
20 checks were completed on their behalf?
21 A. Yes.
22 Q. In what instances?
23 A. DEA inspector.
24 Q. How about any Rite Aid

Page 220

1 associates?
2 A. Sure. Supply chain auditors
3 coming from other DCs. The general
4 manager under a proper escort were
5 allowed into the cage.
6 Q. Are those the only instances
7 in which a Rite Aid associate who didn't
8 have a background check would be given
9 access to the cage?
10 A. That would be allowed in
11 there, correct.
12 Q. Are you sure?
13 MR. LAVELLE: Object to
14 form.
15 THE WITNESS: That's all I
16 can remember.
17 (Document marked for
18 identification as Exhibit
19 Rite Aid-Frost-9.)
20 BY MR. CLUFF:
21 Q. I'm going to hand you a copy
22 of a document produced by Rite Aid. It's
23 a two-page e-mail chain beginning at
24 Rite_Aid_OMDL_001825, to 001826.

Page 221

1 Appears to be an e-mail
2 chain primarily between you and Ms. Wood
3 with some other people copied in the
4 middle from Rite Aid?
5 A. We're talking about eight or
6 nine? Nine? Okay.
7 MR. LAVELLE: It should be
8 nine.
9 THE WITNESS: Okay.
10 BY MR. CLUFF:
11 Q. This is Exhibit 9. Looking
12 at Ms. Wood's original e-mail to you
13 dated February 20th, do you see that on
14 the second page?
15 A. Yes.
16 Q. On the back page?
17 A. Mm-hmm.
18 Q. "Keith, I understand there
19 is a new girl in the cage. Her name is
20 Tammy Coakley. She went to the security
21 desk, talked to Larry Ringgold and told
22 him she is now in the cage and needs
23 access, and he gave it to her."
24 Do you see that?

Page 222

1 A. Yes.
2 Q. And then Ms. Wood asks you,
3 "Did you give approval? Do we know when
4 her last background check was? I would
5 think Larry knows the process, and I
6 don't understand why she was given
7 access. She hadn't even had a day's
8 training yet."
9 Do you see that?
10 A. Yes.
11 Q. So is this an example of
12 someone given cage access without
13 training or without a background check?
14 MR. LAVELLE: Object to
15 form.
16 THE WITNESS: Larry made a
17 mistake in giving her access.
18 BY MR. CLUFF:
19 Q. So Larry violated Rite Aid
20 at that point?
21 A. He violated our internal
22 procedures on how to properly give access
23 to somebody into the cage, which requires
24 a background check first. She was in

Page 223

1 pharmacy. So she had a background check.
2 She just didn't have a second background
3 check for the control cage.
4 Q. She had not complied with
5 the procedure for getting cage access,
6 correct?
7 A. Larry should not have given
8 her access without having that come back
9 competitive, without having an escort.
10 Q. And she didn't even had a
11 day's training yet either, correct?
12 MR. LAVELLE: Object to
13 form.
14 THE WITNESS: I do not know
15 if she didn't have training.
16 BY MR. CLUFF:
17 Q. If you look at the back
18 page, Ms. Wood's e-mail to you dated
19 February 20th, do you see that?
20 A. Okay.
21 Q. And the last sentence says,
22 "She hasn't even had a day's training
23 yet."
24 Do you see that?

Page 224

1 A. Okay.
2 Q. Do you know if Rite Aid had
3 any internal policies or procedures about
4 discipline for people who violated
5 policy?
6 A. We have progressive
7 discipline for a lot of people, for a lot
8 of instances, policies.
9 Q. How about an instance like
10 this where Larry gave somebody cage
11 access who shouldn't have had it? Was
12 there any disciplinary proceeding?
13 MR. LAVELLE: Object to
14 form.
15 THE WITNESS: I do not know.
16 BY MR. CLUFF:
17 Q. Do you know if there are any
18 instances of people given access to the
19 cage who didn't have background checks or
20 training?
21 A. No.
22 Q. Did it concern you that
23 Larry wasn't following the internal
24 policies and procedures about cage

Page 225

1 access?
2 MR. LAVELLE: Object to
3 form.
4 THE WITNESS: I'm sure I
5 wasn't happy in this instance.
6 BY MR. CLUFF:
7 Q. What would you have done as
8 a result of this instance?
9 MR. LAVELLE: Object to
10 form.
11 THE WITNESS: I would have
12 notified his manager.
13 BY MR. CLUFF:
14 Q. Who was his manager?
15 A. Nathan Williams.
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 226

Page 228

Q. Is there some point in time during which the Perryman distribution

1 says, "From Larry Ringgold." And then if
2 you turn to the back, you can see there's
3 a "to" line?
4 A. Okay.
5 Q. You see you're copied on the
6 last line of the "to" section there?
7 A. Okay.
8 Q. And do you see the subject,
9 DEA compliance?
10 A. Mm-hmm.
11 Q. Let's look at the subject --
12 or the text of that first e-mail. "FYI,
13 the monthly Rx cage and vault test was
14 conducted today. Everything was good and
15 we are once again compliant for the month
16 of March."

17 Do you see that?

18 A. Okay.

19 Q. Earlier we talked about
20 pharmacy cage or controlled substances
21 cages or vault tests, I asked if those
22 come from DEA requirements.

23 Looking at this e-mail, can
24 you -- can you tell me what understanding

Page 227

Page 229

¹ center was out of compliance with that
² requirement?

3 A. I do not know.

(Document marked for
identification as Exhibit
Rite Aid-Frost-10.)

7 BY MR. CLUFF:

8 Q. I'm going to hand you a copy
9 of a document produced by Rite Aid --
10 Rite Aid as Rite_Aid_OMDL_0023456. It's
11 a two-page document.

12 A. Okay.

13 Q. Okay. So, on the bottom of
14 the first page, and continuing over to
15 the back side, there's an e-mail from
16 Larry Ringgold to [REDACTED]@RightAid,
17 Joyce Sweitzer, MWood, Tahir Senoussi,
18 Bill Morrow, and KFrost.

19 You were copied on this
20 e-mail, right?

21 A. Which -- are you looking at
22 the back or the front?

23 Q. The very bottom on the
24 front. Do you see there's a line that

¹ you have about why the subject line would
² be "DEA compliance"?

3 A. Because there was a term
4 that anything that dealt with KTU's DEA
5 compliance, DEA requires that you have a
6 secure monitoring system, but he used the
7 word DEA compliance in there, the term
8 that he used globally whenever he was
9 talking about the cage.

10 Q. That's a term that Larry
11 Ringgold used globally?

12 A. Yes. Yes.

13 Q. Okay. Do you see at the end
14 there where it says "once again compliant
15 for the month of March"? Do you see
16 that?

17 A. Mm-hmm.

18 Q. What does that mean,
19 "compliant for the month of March"?

20 A. Meaning that he did the --
21 the test.

22 Q. Okay. Moving under the --
23 the front page, if you flip back over to
24 the front -- okay, you're there.

Page 230

1 The bottom e-mail that you
2 write to Ms. Wood says, "Marian, do
3 you" -- "do you put a copy of this in a
4 folder?"
5 And then she replies and
6 says, "No because Larry keeps a log."
7 Do you see that?
8 A. Mm-hmm.
9 Q. So there would have been a
10 log of these monthly tests of the motion
11 sensors?
12 A. Correct.
13 Q. And then you ask, "How do we
14 know, or how do you know if he misses one
15 or it isn't done correctly? Remember how
16 they used to mess this up?"
17 A. Mm-hmm.
18 Q. What did you mean when you
19 said they used to mess this up?
20 A. He might not have done it on
21 the last day of the month. Or he might
22 have done it a week later, than right at
23 the very last of the month.
24 Q. Is it possible that he just

Page 231

1 didn't do it sometimes?
2 A. I don't know.
3 Q. But if he did do it, it
4 would be reflected in this log that he
5 kept?
6 A. Or send us an e-mail.
7 Q. Do you know if he saved
8 those logs anywhere?
9 A. No, I do not know.
10 Q. Did you ever talk to him
11 about those logs at all?
12 A. I remember talking to him
13 about the logs.
14 Q. What was the substance of
15 that conversation?
16 A. Are you keeping a log.
17 Q. And what did he say?
18 A. Yes.
19 Q. But you didn't ask him where
20 he kept the logs?
21 A. No.
22 Q. Do you recall ever having
23 any pharmacy department meetings?
24 A. Yes.

Page 232

1 Q. How often would you hold
2 pharmacy department meetings or attend
3 pharmacy department meetings?
4 A. If I thought there was a
5 need for one.
6 Q. Would you have been the
7 person to call the pharmacy department
8 meeting?
9 A. Not necessarily.
10 Q. Were there ever any
11 regularly scheduled meetings of the
12 pharmacy department?
13 A. No.
14 Q. Do you know who Janet
15 Kuzma-Miller is?
16 A. Yes, I know who she is.
17 Q. Who is she?
18 A. She used to be an assistant
19 manager that worked for me.
20 Q. In the pharmacy department
21 at Perryman?
22 A. Yes.
23 Q. Do you recall having a
24 pharmacy department meeting in

Page 233

1 September of 2010 approximately?
2 MR. LAVELLE: Object to
3 form.
4 THE WITNESS: I don't
5 remember that. I don't remember
6 that.
7 BY MR. CLUFF:
8 Q. Do you know what a concealed
9 shortage is?
10 A. Yes.
11 Q. What's a concealed shortage?
12 A. It means a vendor sends
13 something to us, supposedly all intact,
14 whether it was like 12 or six. And when
15 we received it, it wasn't -- something
16 was missing. That's a concealed
17 shortage.
18 Q. Do you know what the 24-hour
19 rule is in -- in connection to you
20 receiving controlled substances?
21 A. Yes.
22 Q. What is it?
23 A. Try to receive a substance
24 within 24 hours.

Page 234

1 Q. What does it mean to receive
 2 a substance?
 3 A. Get it into your inventory.
 4 Q. So the idea is that you
 5 would have a delivery occur from a
 6 vendor, and then it would have to be
 7 received into inventory within 24 hours?
 8 A. Yes.
 9 Q. And if that didn't happen,
 10 was it a DEA violation?
 11 A. No.
 12 Q. What would it be a violation
 13 of?
 14 A. It just wasn't in our
 15 inventory yet.
 16 Q. Was there ever any concern
 17 at Rite Aid that controlled substances
 18 were not making it into inventory within
 19 24 hours?
 20 A. No.
 21 Q. Is the answer no, there was
 22 never a concern or just no, you don't
 23 recall?
 24 A. No, we weren't concerned

Page 235

1 with it being in the inventory.
 2 MR. CLUFF: We've been going
 3 about an hour. Why don't we take
 4 another break.
 5 MR. LAVELLE: Sure.
 6 THE VIDEOGRAPHER: Off
 7 record at 1:42 p.m.
 8 (Short break.)
 9 HE VIDEOGRAPHER: We are
 10 back on the record at 2:00 p.m.
 11 BY MR. CLUFF:
 12 Q. Okay. We are back on the
 13 record. So you're back under oath,
 14 Mr. Frost.
 15 A. Okay.
 16 Q. When we broke we were
 17 talking about receiving orders and then
 18 getting them into inventory. I just want
 19 to talk about two documents really
 20 quickly, kind of round out that
 21 discussion.
 22 One is a document that was
 23 produced by Rite Aid as Rite_Aid_OMDL_ --
 24 MR. CLUFF: I did that

Page 236

1 again. I marked my copy that has
 2 highlighting on it.
 3 It's produced as
 4 Rite_Aid_OMDL_00100116 to 117.
 5 It's Number 9 or 6.
 6 (Document marked for
 7 identification as Exhibit
 8 Rite Aid-Frost-11.)
 9 BY MR. CLUFF:
 10 Q. Did you have a chance to
 11 review that?
 12 A. I did.
 13 Q. Okay. I want to look at the
 14 first e-mail in the chain which is on the
 15 back page, if you flip it over.
 16 And there, there is an
 17 e-mail from Marian Wood to you, and Tahir
 18 Senoussi and B. Sordillo and N. Brodie.
 19 Do you see that?
 20 A. Yes.
 21 Q. The subject is late CD
 22 receipts. Do you know what that means?
 23 A. Yes.
 24 Q. What does it mean?

Page 237

1 A. In this case it was a pallet
 2 of CDs that were offloaded probably by a
 3 truck and was not moved to the control
 4 cage according to Marian in a timely
 5 manner.
 6 Q. You used the phrase "CD."
 7 What does CD refer to?
 8 A. Control drugs.
 9 Q. Okay. So we were talking
 10 earlier about control drugs being moved
 11 into inventory. I asked if that had ever
 12 happened before, where they weren't moved
 13 in on time and whether there was some
 14 concern about it. And here it looks like
 15 there was some concerns about it, in
 16 2010, correct?
 17 MR. LAVELLE: Object to
 18 form.
 19 THE WITNESS: Marian would
 20 have some concerns about it.
 21 BY MR. CLUFF:
 22 Q. She writes, "We are
 23 continuing to take delivery of product
 24 into the building and not receiving into

Page 238

1 the system until the next day."
2 Do you see that?
3 A. Yes.
4 Q. So this was a continuing
5 problem?
6 MR. LAVELLE: Object to
7 form.
8 THE WITNESS: No.
9 BY MR. CLUFF:
10 Q. She writes, "We are
11 continuing to take delivery of product
12 into the building and not receiving it
13 into the system," correct?
14 A. Yes.
15 Q. Okay. So this document
16 indicates that it was a continuing
17 problem, right?
18 MR. LAVELLE: Object to
19 form. Objection, asked and
20 answered.
21 THE WITNESS: That was
22 Marian's opinion.
23 BY MR. CLUFF:
24 Q. The next paragraph she says,

Page 239

1 "This is a DEA (C.F.R. 1304.21-D) and
2 regulatory compliance regulatory
3 checklist Number 19 violation."
4 Do you see that?
5 A. Yes.
6 Q. Earlier I asked you if
7 failing to take controlled substances
8 into inventory within 24 hours was a
9 regulatory violation and you said no. Do
10 you recall that?
11 A. Yes.
12 Q. Does this refresh your
13 recollection about whether it's a
14 regulatory violation?
15 A. No, it doesn't refresh my
16 memory on that.
17 Q. Well, at least as far as
18 this e-mail is concerned, Marian believed
19 that it was a DEA violation, correct?
20 A. Yes.
21 Q. She writes, "A decision has
22 to be made, are we going to continue
23 doing this and risk fines and penalties
24 for each occurrence from the DEA and/or

Page 240

1 failed audits by the regulatory
2 compliance team, or if a procedure will
3 be put into place to get these late
4 deliveries received."
5 Do you see that?
6 A. Yes.
7 Q. Do you recall any instances
8 in which Rite Aid made a decision to
9 continue with a business practice even
10 though it was a DEA violation?
11 MR. LAVELLE: Object to
12 form.
13 THE WITNESS: No.
14 BY MR. CLUFF:
15 Q. So this is the only instance
16 then where that question was asked?
17 MR. LAVELLE: Object to
18 form.
19 THE WITNESS: I don't know
20 what questions are asked on a
21 habitual basis.
22 BY MR. CLUFF:
23 Q. I wasn't really asking about
24 a habitual basis. I was asking about any

Page 241

1 instances that you can recall where
2 somebody may have asked are we going to
3 continue in this practice that violates
4 the DEA regulations or if we are going to
5 make a procedure to get it done right.
6 Do you recall anything like that?
7 MR. LAVELLE: Object to
8 form.
9 THE WITNESS: I don't recall
10 anything like that.
11 BY MR. CLUFF:
12 Q. If you turn over to the
13 front page which looks like you've
14 already done. Bill Morrow. Do you know
15 who Bill Morrow is?
16 A. Yes.
17 Q. Who is Bill Morrow?
18 A. Senior operations manager.
19 Q. It looks like he's got a
20 signature block there that says senior
21 operations manager, as you indicated,
22 Mid-Atlantic customer support center.
23 What's the Mid-Atlantic
24 customer support center?

<p style="text-align: right;">Page 242</p> <p>1 A. Our building in Perryman. 2 Q. That's the Perryman 3 distribution center? 4 A. Yes. 5 Q. He says, "We need to comply. 6 What is preventing us from complying?" 7 Do you see that? 8 A. Yes. 9 Q. And then Brian Sordillo 10 replies. Who is Brian Sordillo? 11 A. He was an inbound assistant 12 receiving manager. 13 Q. He asks, "What is the 14 guideline/compliance on receiving 15 controlled drugs?" 16 So he didn't even know what 17 the -- what the guideline was, right? 18 A. I don't know if he did or 19 didn't. 20 Q. But he's asking the 21 question, what -- what the guidelines 22 are, right? 23 A. Yes. 24 Q. Marian Wood writes, "The</p>	<p style="text-align: right;">Page 244</p> <p>1 those discussions? 2 A. Well, that if a delivery 3 came at 11:59 that it would be impossible 4 to receive it in one minute before it 5 changed the day. 6 Q. So were there any -- she 7 said, "I will give it to Tahir to have a 8 plan in place." Do you know if a plan 9 was ever put in place? 10 A. Tahir was our department 11 manager in Rx, yes. 12 Q. So was a plan put in place 13 then? 14 A. Yes. 15 Q. So presumably this problem 16 should have been resolved in 2010? 17 A. The plan was for Tahir to 18 make sure that anything that was in the 19 control cage under accountability would 20 be received by the night crew, and they 21 start at 7 o'clock at night. 22 Q. I'll show you another 23 document produced by Rite Aid as 24 Rite_Aid_OMDL_0029175.</p>
<p style="text-align: right;">Page 243</p> <p>1 date of delivery is the date of receipt. 2 It does not state we have 24 hours. 3 Nikolai knows this. The chain of custody 4 I have states the shipment was unloaded 5 from the truck at 1400 and not taken to 6 the cage until 1538." 7 Do you see that? 8 A. Yeah. 9 Q. And at the top she writes to 10 Brian Sordillo only, you're not copied on 11 that, but we're just looking at how the 12 chain evolved here. 13 She writes, "Now that we 14 know it states that it must be received 15 that day, I will get with Tahir to have a 16 plan in place," correct? 17 A. Yes, that's what she says. 18 Q. So did you ever talk to her 19 about having a plan in place for 20 receiving controlled substances within 21 24 hours after delivery? 22 A. I remember having 23 discussions to that effect. 24 Q. What were the substance of</p>	<p style="text-align: right;">Page 245</p> <p>1 (Document marked for 2 identification as Exhibit 3 Rite Aid-Frost-12.) 4 THE WITNESS: Okay. 5 BY MR. CLUFF: 6 Q. Let's start with the first 7 e-mail in the chain. It begins on the 8 bottom of the front page. 9 A. Mm-hmm. 10 Q. Flip over. We'll look, if 11 you flip over, Mr. Frost. At the bottom 12 of that front page you'll see there's an 13 e-mail from Marian Wood to a number of 14 people. If you flip over to the back. 15 You'll see you're -- you're 16 copied on that e-mail from Ms. Wood. Do 17 you see that? 18 A. Okay. 19 Q. Do you see the subject is 20 compliance violation, do you see that? 21 A. Yes. 22 Q. She writes, and says, "We 23 had a compliance violation on receipts 24 from Saturday 5/26. A shipment was</p>

Page 246

1 unloaded on 5/26 at essentially midnight,
2 12:05 a.m., it was taken in the cage at
3 12:09 a.m. However, it was not received
4 until Tuesday 5/29 at 7:25 a.m."
5 Do you see that?
6 A. Yes.
7 Q. So this product -- this
8 product was delivered on Saturday and not
9 received until Tuesday. So two days
10 later, three days later?
11 A. Okay.
12 Q. She says, "Just an FYI, the
13 DEA can fine us up to \$10,000 per
14 occurrence."
15 Do you see that?
16 A. Mm-hmm.
17 Q. Isn't this the same subject
18 we were talking about in Exhibit 11 from
19 2010?
20 MR. LAVELLE: Object to
21 form.
22 THE WITNESS: Is it the same
23 what?
24 BY MR. CLUFF:

Page 247

1 Q. The same subject, receiving
2 shipments within 24 hours.
3 A. Yes.
4 Q. And that's the same
5 situation that Tahir was going to have a
6 plan to deal with in 2010?
7 A. It was Memorial Day weekend.
8 It was different from that.
9 Q. The reason the shipment was
10 delayed three days was because it was
11 Memorial Day weekend?
12 A. It appears to be so.
13 Q. But this was still an
14 ongoing issue in 2012, correct?
15 MR. LAVELLE: Object to
16 form.
17 THE WITNESS: It was -- it
18 was an instance where this didn't
19 happen.
20 BY MR. CLUFF:
21 Q. So two years later there's
22 at least one more instance when shipments
23 were not being received within the
24 DEA-allotted time period?

Page 248

1 MR. LAVELLE: Object to
2 form.
3 THE WITNESS: It was one
4 instance after that, yes.
5 BY MR. CLUFF:
6 Q. Are you aware of any other
7 instances, now that we've talked about at
8 least two of them in two years?
9 A. No.
10 Q. Earlier we talked about
11 trash disposal, I think, as part of the
12 responsibilities that your department was
13 obligated to be monitoring in the
14 pharmacy department. Is that -- is that
15 right?
16 A. Controlled cage department.
17 Q. What was the concern with
18 controlled substances potentially being
19 thrown out?
20 A. The concern?
21 Q. Mm-hmm.
22 A. Well, we didn't want a
23 bottle or two to be left in a box or in
24 the plastic and taken accidentally out of

Page 249

1 the cage.
2 Q. Why would you want to
3 prevent that?
4 A. Drug diversion.
5 Q. So throwing -- throwing
6 controlled substances out in the trash is
7 one way that diversion could occur?
8 A. It's an instance.
9 (Document marked for
10 identification as Exhibit
11 Rite Aid-Frost-13.)
12 BY MR. CLUFF:
13 Q. I'm going to hand you a
14 document that we're going to mark
15 Exhibit 13. It's Rite_Aid_OMDL_0013911,
16 and an e-mail attachment that has a
17 picture attached to that. The entire
18 chain runs from 13911 to 13914.
19 A. Okay.
20 Q. Starting at the back, as you
21 can see, there's a picture of what
22 appears to be the inside of a trash can,
23 a cardboard box, and a number of bottles.
24 Do you see that?

Page 250

1 A. Yes, I do.
2 Q. It appears from the cover
3 e-mail of this document that this was a
4 picture that was forwarded to you by an
5 associate named Marcie. When you guys
6 are investigating for potential diversion
7 through the trash, is this the kind of
8 evidence that you would be seeing?
9 MR. LAVELLE: Object to
10 form.
11 THE WITNESS: No.
12 BY MR. CLUFF:
13 Q. When you were conducting
14 investigations about diversion through
15 the trash, what kind of investigation
16 would have been conducted?
17 MR. LAVELLE: Object to
18 form.
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 251

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 252

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 Q. When -- this instance aside,
16 I'm just using --
17 A. Okay.
18 Q. -- this as an example of how
19 an investigation may have occurred.
20 Let's say, like, you know, in this kind
21 of an instance where there was a
22 suspicion of potential diversion.
23 Who -- what department at
24 the Perryman distribution center would

Page 253

1 have conducted that investigation?
2 A. Two departments. The
3 pharmacy department and security
4 department.
5 Q. Would those have been
6 separate investigations or a joint
7 investigation between the two
8 departments?
9 A. Well, I can't recall any
10 investigation that happened. But it
11 would have been both of us, because we
12 don't monitor the cameras, security does.
13 Q. You said you can't recall
14 any investigations. Is that because
15 there was never any conducted or just
16 because it's been so long that you don't
17 remember any?
18 A. I don't remember any.
19 Q. What would happen if it was
20 determined that an associate was stealing
21 product out of the cages or the vaults at
22 the -- at the Perryman center?
23 MR. LAVELLE: Object to
24 form.

Page 254

1 THE WITNESS: Well, first of
2 all, they would have been fired.
3 And then HR would have to make a
4 determination whether they needed
5 to be reported to the police or
6 intentionally or what have you.
7 BY MR. CLUFF:
8 Q. Would they have been
9 reported to the DEA at all?
10 A. That associate that was
11 fired? No.
12 Q. What about the theft or the
13 loss, would those have been reported to
14 the DEA?
15 A. No.
16 Q. Did Rite Aid have any policy
17 or procedure about when theft or loss
18 should be reported to the DEA?
19 A. No.
20 Q. It was not Rite Aid's policy
21 to do that when a theft or a loss was
22 detected?
23 A. On receipts.
24 Q. What does that mean?

Page 255

1 A. Inadvertent loss, suspicious
2 order monitoring. We file a 106 with the
3 DEA if we thought the shipper or the
4 vendor might not know about something not
5 coming to us, or if the stuff was damaged
6 we'd file a DEA -- a 41 form, submit it
7 to the DEA.
8 Q. So you said there was an
9 inadvertent loss, suspicious order
10 monitoring, and then we file a 106 with
11 the DEA. Is an inadvertent loss a part
12 of Rite Aid's suspicious order monitoring
13 policy or are those two separate
14 concepts?
15 MR. LAVELLE: Object to
16 form.
17 THE WITNESS: Just
18 inadvertent loss, I meant to say
19 concealed damaged when we get
20 stuff from the vendor we always
21 reported those to the DEA.
22 BY MR. CLUFF:
23 Q. And then the suspicious
24 order monitoring you referenced, what was

Page 256

1 that?
2 A. Above the threshold,
3 excessive order monitoring program that
4 we had.
5 Q. Okay. And you mentioned
6 that the shipper or the vendor might not
7 know something about a product not coming
8 to Rite Aid. Is that going to result in
9 a report to the DEA as well?
10 A. Yeah, that's part of the
11 106.
12 Q. Okay. And what's the Form
13 41?
14 A. Damage. Like sometimes if
15 we get something from a shipper, if it
16 was damaged or something, we report that
17 because that could be a form of diversion
18 or something from the shipper or the
19 vendor if they didn't worry about, so we
20 wouldn't be charged.
21 Q. If Rite Aid sent a shipment
22 to a store, and it showed up in the store
23 and there was some damage and product was
24 missing out of that shipment when it

Page 257

1 arrived at the store, would that result
2 in a report to the DEA?
3 A. I don't know.
4 Q. Would that have been outside
5 your purview?
6 A. Yes.
7 Q. I'm going to hand you a
8 document and a copy of the spreadsheet
9 that was attached to it.
10 (Document marked for
11 identification as Exhibit
12 Rite Aid-Frost-14.)
13 BY MR. CLUFF:
14 Q. It's been produced as
15 Rite_Aid_OMDL_0009662. The spreadsheet
16 that was attached had two pages, one is
17 titled 1.12-5.12. And the second is
18 titled 6.12 to 9.12. But the spreadsheet
19 was produced in native as
20 Rite_Aid_OMDL_0009663.
21 And we'll mark it as
22 Exhibit 14.
23 So at the bottom of that
24 front page there's an e-mail from Marian

Page 258

1 L. Wood to you Keith Frost, Nathan
2 Williams, and Larry Ringgold?
3 A. Okay.
4 Q. And the subject is CD
5 inventory. Do you see that?
6 A. Mm-hmm.
7 Q. Okay. And the subject line
8 CD, does that refer to controlled
9 substances or control drugs?
10 A. Right.
11 Q. Okay. She writes, "Keith,
12 when I came in this morning I see that
13 nightshift was short one unit of a C3A
14 buprenorphine 8 mg tab LS 30, 105, 06 E
15 07."
16 What is one unit of -- what
17 is she describing there, the one unit of?
18 A. A bottle of whatever that
19 item is.
20 Q. Okay. What does C3A stand
21 for?
22 A. I'm not sure. I think it's
23 the ARCOS is C3.
24 Q. Is that like Control List 3?

Page 259

1 MR. LAVELLE: Object to
2 form.
3 THE WITNESS: C3 is a Class
4 3, and the -- and A designation I
5 think means an ARCOS item.
6 BY MR. CLUFF:
7 Q. Oh, okay. Then she
8 continues, "Last week 9/20 end of day was
9 short two units, C3A hydro/APAP, 10/325."
10 Do you know what that refers
11 to?
12 A. No.
13 Q. Does hydro refer to
14 hydrocodone in that?
15 A. I believe so.
16 Q. She says, "When they were
17 finished the inventory on Friday they
18 were short another unit for a total of
19 three."
20 Then it says, "I am not
21 comfortable with this many C3A
22 shortages."
23 When there was a shortage
24 like this, would there have been an

Page 260

1 investigation conducted?
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 Q. And if you identified that
6 an associate had misplaced the
7 substances, what would have happened?
8 A. Misplaced?
9 Q. Yeah, like put it in the
10 wrong place, put it in the wrong pallet,
11 something like that.
12 A. Well, they would have
13 received a corrective action.
14 Q. And what if it was
15 determined that they were stealing?
16 A. If they were stealing they
17 would be fired. Theft is a firing
18 offense.
19 Q. Can you recall an instance
20 where somebody was disciplined or fired
21 because of a shortage during their shift
22 in the cage?
23 A. An instance, no.
24 Q. If you flip the page.

Page 261

1 You'll see the first page of a
2 spreadsheet and on the column to the left
3 it says week ending. Do you see that?
4 A. 2/24? I mean, there's a lot
5 of week-ending items. I don't know which
6 one you're referring to.
7 Q. Yeah, I'm just saying that
8 that's what that that document is.
9 A. Okay, yeah.
10 Q. And it looks like it's got
11 dates from January to May of 2012 there?
12 A. Okay.
13 Q. And then it says there is an
14 item description two columns over. It
15 appears that there are various classes of
16 drugs there, correct?
17 And then the location is --
18 I'm curious about what those location
19 codes are.
20 Can you -- can you tell me
21 what those would have been?
22 A. I mean for example,
23 10507B08?
24 Q. Yeah, that's a good one.

<p style="text-align: right;">Page 262</p> <p>1 A. That's a forward pick 2 location. 3 Q. Okay. 4 How about if you go down to 5 4/20/2012 where it says Item Number 6 89319. The item description is C3A hydro 7 CDN/APAP, and then the location is 105 06 8 C06. Where would that location be? 9 A. Where is that one at? 10 Okay. Yeah, it was a 11 forward pick location. These are all 12 forward pick locations. 13 Q. Do -- what was the purpose 14 of keeping this spreadsheet, just to 15 track where the shortages were? 16 A. Right. So when we do weekly 17 adjustments, we could account for 18 shortages or overages in any forward 19 pick. 20 Q. Do you report any shortages 21 to the DEA? 22 A. These shortages, no. 23 Q. Is there a reason why not? 24 A. Probably was reconciled by</p>	<p style="text-align: right;">Page 264</p> <p>1 was supposed to, we'd make a call to the 2 store and say hey, you might have got 3 three, instead of two. We noticed that 4 we are short in a forward pick. Please 5 let us know. 6 So we'd let the customer 7 service action send a message to the 8 store, say hey, you might have an overage 9 or you might have a short. 10 Q. So my question is more about 11 where Ms. Wood's reconciliations would be 12 located. 13 Did she do those by 14 computer, was it by phone call, did she 15 create any documentation of those 16 reconciliations? 17 MR. LAVELLE: Object to 18 form. 19 THE WITNESS: Well -- well, 20 you can see she obviously wrote it 21 down. I mean we kept -- we kept 22 track of everything based on our 23 inventory on it. So she would 24 have wrote it down on a control</p>
<p style="text-align: right;">Page 263</p> <p>1 the end of the week. Like you might have 2 a bottle that rolls underneath it, or if 3 an associate has a mispick. 4 Q. Can you tell me where in 5 this e-mail or this document it says that 6 these have been reconciled someplace 7 else? 8 A. It's not listed anywhere 9 in -- in the document. 10 Q. If I were looking for 11 evidence that these were reconciled, 12 where would I find that? 13 A. Marian Wood did a 14 reconciliation every week. 15 Q. How did she do that? 16 A. Pluses and minuses. We do 17 inventory, like I said, at the end of 18 every day, and end of every shift. And 19 then we look at the allocations based on 20 that, based on inventory. If it was a 21 daily, we'd look at -- to see what the 22 store orders were, because we did the 23 100 percent audit. If the store looked 24 like it might have gotten more than it</p>	<p style="text-align: right;">Page 265</p> <p>1 log. 2 BY MR. CLUFF: 3 Q. Where -- but I'm looking at 4 this spreadsheet. You can look on the 5 back of the first page. I don't see 6 anywhere on there, maybe you can help me, 7 that it talks about a reconciliation. So 8 would there have been a separate document 9 where she kept those? 10 MR. LAVELLE: Object to 11 form. 12 THE WITNESS: Yes. 13 BY MR. CLUFF: 14 Q. And did you ever see a 15 document like that that she worked in? 16 A. A document like -- like we 17 are talking about? 18 Q. A reconciliation document? 19 A. Yes. 20 Q. Okay. So she kept those as 21 a regular part of her work? 22 A. Yes. And the DEA clerk. 23 Q. Let's look at the -- the 24 front page again. At the top there's an</p>

Page 266

1 e-mail from Rebecca Strickland. Do you
2 know who Rebecca Strickland is?
3 A. Yes.
4 Q. Who is that?
5 A. She used to be an assistant
6 manager in pharmacy.
7 Q. Was she in the -- the
8 Perryman distribution center?
9 A. Yes.
10 Q. She writes back -- oh,
11 excuse me. Looks like from the top you
12 write back to all of these people copied
13 on the to line. Would those all have
14 been your assistant managers at Perryman?
15 A. Yes. Assistant managers,
16 DEA coordinator, and Marian Wood, yes.
17 Q. Okay. And you write, "We
18 have to get a better handle on these
19 losses."
20 Do you see that?
21 A. Mm-hmm.
22 Q. If you felt like they were
23 losses, how come they weren't reported to
24 the DEA?

Page 267

1 A. Well, what I meant was
2 discrepancies where -- where we did an
3 inventory and there were minus one.
4 Q. Is there a difference
5 between a discrepancy and a loss?
6 A. Yeah. A loss means that you
7 can't locate the -- the item.
8 Q. And you called these losses
9 meaning that you couldn't locate these
10 items?
11 MR. LAVELLE: Object to
12 form.
13 THE WITNESS: I can't
14 recall, you know, what the context
15 I was saying that word.
16 BY MR. CLUFF:
17 Q. But this document at least
18 indicates that they were lost?
19 MR. LAVELLE: Object to
20 form.
21 THE WITNESS: They were
22 not in -- it was not in the
23 forward pick is what it indicates.
24 BY MR. CLUFF:

Page 268

1 Q. Earlier we talked about
2 audits, if you recall. I think you
3 indicated that there was an internal
4 audit process of each of the distribution
5 centers?
6 A. Mm-hmm.
7 MR. LAVELLE: You need to
8 give audible answers.
9 THE WITNESS: Yes.
10 BY MR. CLUFF:
11 Q. I don't -- I don't want to
12 go through a laborious discussion about
13 audit process. But I do have a copy of
14 the audit checklists and I'd like to just
15 go through them. I'm going to hand you a
16 copy.
17 But before I do, I want to
18 let you know that I'm not trying to have
19 an exceedingly long discussion. I just
20 want to kind of verify for the record
21 that this is what the audit checklists
22 look like and that this is what -- what
23 would have been used during one of the
24 audits.

Page 269

1 So I'm going to hand you a
2 document I'm going to mark as Exhibit 15.
3 It's been produced as
4 Rite_Aid_OMDL_0013234.
5 (Document marked for
6 identification as Exhibit
7 Rite Aid-Frost-15.)
8 BY MR. CLUFF:
9 Q. That is the e-mail. There
10 are nine documents attached -- this is
11 for the record. Nine documents attached
12 to the record, each of which was a
13 natively produced Excel spreadsheet.
14 This document includes
15 every -- every tab from each one of those
16 spreadsheets. And I want to kind of just
17 look through them -- have you look
18 through them really quickly and let me
19 know whether or not, based on your
20 recollection, those appear to be true and
21 accurate copies of what would have been
22 used during the time period.
23 MR. LAVELLE: So we don't
24 get confused, I'm going to move

Page 270

1 these over by the court reporter.
2 THE WITNESS: Okay. Yeah,
3 this would have been a
4 representative checklist used by
5 the -- the DEA audit to go through
6 the distribution center.
7 BY MR. CLUFF:
8 Q. Do you recall if there were
9 any revisions to these ever?
10 A. Yes.
11 Q. It was a document that kind
12 of evolved over time?
13 A. Mm-hmm, yes.
14 Q. I have some other copies of
15 this, of this e-mail that also have some
16 of these same attachments that I
17 determined I would not print. So I'm not
18 going to ask you to guess about the
19 contents of those.
20 A. Okay.
21 Q. I was just asking if -- if
22 you recalled that they kind of changed
23 over time --
24 A. Yes.

Page 271

1 Q. -- and had some revisions
2 made --
3 A. Yeah.
4 MR. LAVELLE: Please wait
5 until the question is finished
6 before you answer, otherwise the
7 record's going to be confused.
8 BY MR. CLUFF:
9 Q. Yeah, just to get a clear
10 answer.
11 MR. CLUFF: Thanks,
12 Mr. Lavelle.
13 BY MR. CLUFF:
14 Q. You do recall that these
15 documents changed over time to some
16 extent?
17 A. Yes.
18 Q. Okay. I want to look just
19 really briefly at the -- the cover
20 e-mail. It's from Joseph -- I would say
21 Dellaquilla, but it's got a lot of Ls so
22 I don't know how to say it.
23 And he sends it to a number
24 of people, including yourself there,

Page 272

1 the -- the last on the list. Do you see
2 that?
3 A. Yes.
4 Q. Okay. And he says, "Team,
5 attached are the checklists for audit
6 areas. Please disperse to the a.m. and
7 complete an area audit for your assigned
8 processes."
9 Do you see that?
10 A. Yes.
11 Q. So what he had been sending
12 you, this, as part of this list, to
13 conduct an audit of the Perryman
14 distribution center?
15 A. Of my area.
16 Q. Your area within the
17 Perryman distribution center?
18 A. Yes.
19 Q. Okay. So earlier we talked
20 about audits occurring where there was an
21 internal group that went to other
22 distribution centers, right?
23 A. Yes.
24 Q. So was there another audit

Page 273

1 process where people from -- where people
2 would audit their own distribution
3 center?
4 A. We do that to prepare for
5 the official audit.
6 Q. So there was an audit to
7 prepare for the internal audit. Is that
8 what you mean?
9 A. Correct.
10 Q. Looking at this list of
11 attachments. Do you see that at the
12 bottom there, it says, "Audit work
13 papers, 9/14/21"? Yes?
14 A. 9/14/12.
15 Q. 9/14/12, thank you.
16 And then there are a number
17 of other documents that range from A.01
18 to A.09, all which can have different
19 names?
20 A. Yes.
21 Q. Looking at that list, A.01
22 through A.09, can you tell me which of
23 those areas would have been your assigned
24 processes?

<p style="text-align: right;">Page 274</p> <p>1 A. Within the regulatory 2 checklist, the control cage area. 3 Q. Looking at the top of the 4 list, it says operations checklist. Do 5 you know who would have been responsible 6 for that area or that process? 7 A. Joe Dellaquila would have 8 delegated that to a -- it could have been 9 an outbound manager or another Region 1 10 department manager or Region 2. 11 Q. How about the transportation 12 checklist? Who would have been in charge 13 of that process? 14 A. Outbound manager in most 15 cases or the transportation senior ops 16 manager. 17 Q. Next one down says 18 inventory-SOX checklist. What is an 19 inventory-SOX checklist? 20 A. Inventory control. 21 Q. Who would have been 22 responsible for that? 23 A. Inventory control manager. 24 Q. What is the quality</p>	<p style="text-align: right;">Page 276</p> <p>1 have chocolate in the building too, to 2 make sure that they were clean and 3 housekeeping areas. 4 Q. The next one down is a 5 physical security assessment. What would 6 the inquiry there have been? 7 A. That would be a security, 8 asset protection. 9 Q. And who would have been 10 responsible for that -- that checklist? 11 A. Nathan Williams. 12 Q. And he was the supervisor 13 for Larry Ringgold? 14 A. Yes. 15 Q. The next one down is an 16 administrative checklist. Do you see 17 that? 18 A. I do. 19 Q. Who would have been 20 responsible for that? 21 A. That could have been a 22 combination between human resources and 23 somebody working for the general manager. 24 Could have been the facilities manager.</p>
<p style="text-align: right;">Page 275</p> <p>1 checklist looking at generally? 2 A. Audits on totes, what we 3 send to stores. 4 Q. Just making sure that they 5 contain accurately what was supposed to 6 be in the tote? 7 A. Correct. 8 Q. Do you know who would have 9 been responsible for that process? 10 A. It would have been inventory 11 control. 12 Q. The next one down is 13 regulatory checklist. You said that 14 would have been your responsibility? 15 A. Yes. 16 Q. What were the areas of 17 inquiry in the regulatory checklist? 18 A. Well, they controlled the 19 pharmacy control cage, also for a period 20 of time I was responsible for the EPA and 21 FDA portion of the regulatory control. 22 Q. What was the FDA portion of 23 the regulatory control? 24 A. Food storage. Because we</p>	<p style="text-align: right;">Page 277</p> <p>1 Q. And then there's another one 2 that says human resources checklist. 3 Would that have been the HR department? 4 A. Yes. 5 Q. The last one is audit work 6 papers. Do you recall generally what 7 that one was generally about? 8 A. Those -- when an audit team 9 goes out, they are given worksheets, 10 certain areas like receiving or 11 maintenance have a long list of items 12 that they have to check off that require 13 work papers to add totals. There's like 14 20 items of probably different things 15 that they had to look at. 16 Q. You can set that aside. 17 That's all I wanted to do with that. 18 Earlier we talked about a 19 VAWD certification. Do you recall that? 20 A. Yes. 21 (Document marked for 22 identification as Exhibit 23 Rite Aid-Frost-16.) 24 BY MR. CLUFF:</p>

Page 278

1 Q. Okay. I'm going to hand you
 2 a copy of a document that was produced as
 3 Rite_Aid_OMDL_0015596 to 0015598. There
 4 are two documents attached to that e-mail
 5 which run from 0015599 to 0015677.
 6 Here again, I don't want to
 7 ask you a lot of questions about the
 8 substance of the document itself. I want
 9 to lay the foundation of what this is and
 10 how it would have been used. So just
 11 generally familiarize yourself with it
 12 and I'll have a few questions for you.
 13 A. Okay. Okay.
 14 Q. The first e-mail in the
 15 chain, it's at the bottom of the second
 16 page that ends 15597. If you flip the
 17 page just one -- yeah. It looks like
 18 there's an e-mail from VAWD@NABP.net to
 19 Jim Akers and [REDACTED]@RiteAid.com.
 20 Do you see that?
 21 A. Yes.
 22 Q. The subject of that -- or
 23 the text of that e-mail beings in the
 24 first paragraph. It says, "Attached,

Page 279

1 please find the results of our review of
 2 the policies and procedures that were
 3 submitted in support of the Verified
 4 Accredited Wholesale Distributors
 5 reaccreditation process."
 6 Do you see that?
 7 A. Yes.
 8 Q. So in order to get an
 9 accreditation with the VAWD, did Rite Aid
 10 need to submit policies and procedures to
 11 show that they complied with the VAWD
 12 recommendations?
 13 A. Like this first paragraph
 14 says. It says reaccreditation. We
 15 already were accredited. But for
 16 reaccreditation, we had to go through the
 17 same process again, pay the \$1,500
 18 application fee, and resubmit policies
 19 and procedures if we had any changes.
 20 Q. Okay. So flip forward a
 21 couple pages. You'll see a document that
 22 has a yellow graphic in the center, right
 23 there to your left. It says, "The
 24 National Association of Boards of

Page 280

1 Pharmacy VAWD program."
 2 Do you see that?
 3 A. Yes.
 4 Q. Is this the reaccreditation
 5 packet that would have been filled out?
 6 A. It's a packet. I don't know
 7 if it's necessarily for reaccreditation.
 8 But it just -- so it's a list of policies
 9 that they wanted the distribution centers
 10 to comply with.
 11 Q. Okay. Let's turn to the
 12 table of contents. It's the page that
 13 ends at 15601.
 14 A. Okay.
 15 Q. And you see there's a
 16 guidance checklist there. And it looks
 17 like there are a number of different
 18 headings under that guidance checklist.
 19 Do you see that?
 20 A. Yes.
 21 Q. Would Rite Aid have been
 22 submitting policies and procedures that
 23 fell within each one of these guidance
 24 checklists, do you recall?

Page 281

1 A. VAWD would have wanted to
 2 see them if they had any questions about
 3 any of them, yes.
 4 Q. Okay. Do you see where it
 5 says, "Controlled substances," and if you
 6 go over to the number it says Page 10?
 7 A. Yes.
 8 Q. Let's go to that just really
 9 quick. Page 10 is the Bates number that
 10 ends in 0015661.
 11 A. Okay.
 12 Q. Do you see that?
 13 A. Mm-hmm.
 14 Q. Okay. So in the top box it
 15 says controlled substances in the gray
 16 field.
 17 Do you see that?
 18 A. Yes.
 19 Q. And it says, "Controlled
 20 substances policies and procedures should
 21 detail," and there are a number of items.
 22 Do you see that?
 23 A. Yes.
 24 Q. And then in the bottom box

Page 282

1 it says, "List names of policies and
2 procedures and documents that meet this
3 requirement," followed by Numbers 1
4 through 5.
5 A. Yes.
6 Q. Those Numbers 1 through 5
7 policies and procedures that Rite Aid
8 would have submitted as complying with
9 this guideline?
10 MR. LAVELLE: Object to
11 form.
12 THE WITNESS: Those would
13 have been policies or procedures
14 that the VAWD wanted to look at.
15 BY MR. CLUFF:
16 Q. So they would be asking Rite
17 Aid to provide these so that they could
18 look at them?
19 A. Yes.
20 Q. Okay. If you move forward
21 in the document to Rite_Aid_OMDL_0015625.
22 Do you see at the top of the page it
23 says, "Rite Aid of Maryland
24 Incorporated," and then it says,

Page 283

1 "Standard operating procedures index"?
2 A. Yes.
3 Q. So would these have been
4 policies and procedures that Rite Aid
5 submitted for VAWD to review?
6 A. Yes.
7 Q. If you -- if you turn
8 forward a couple pages to the page that
9 begins 0015627.
10 A. Okay.
11 Q. Do you see at the top there,
12 there's a text box that has signatures in
13 it. It says, "Rite Aid DC Number 10
14 standard operating procedures disaster
15 plan"?
16 A. Yes.
17 Q. Looking at this one just as
18 an example, in the right side it says,
19 "SOP Number 1."
20 Do you see that?
21 A. Yes.
22 Q. It says, "Effective date."
23 Is that the effective date of this
24 policy?

Page 284

1 A. Yes.
2 Q. And then under that it says,
3 "Supersedes 1/5/2009." Is that the
4 version that this -- that this document
5 supersedes?
6 A. Yes.
7 Q. I don't know if you can make
8 it out in the version that you're looking
9 at. But can you tell who would have been
10 the signatories to this policy or
11 procedure?
12 A. I prepared it. I can't make
13 out the signatures. Received by and
14 approved by.
15 Q. On the left-hand side,
16 there's a reviewed by. It looks like
17 that signature begins with a K. Is that
18 your signature?
19 A. Yes, that's my signature.
20 Q. The effective date here is
21 2010, but the signatures are 6/3/2013.
22 Do you know why there would have been a
23 three-year gap there?
24 A. No.

Page 285

1 Q. But, looking at this you
2 would believe it to be a true and correct
3 copy of a policy and procedure that would
4 have been in effect at this time period?
5 A. Yes.
6 Q. Okay. You can set that
7 aside. I just wanted to make sure that
8 we all understood what that was.
9 Do you know what exception
10 reports are?
11 A. Exception reports?
12 Q. Yeah.
13 A. No, I -- I don't know. I
14 know the term, I don't really know which
15 particular reports exception reports
16 were.
17 Q. Were you required to work
18 with exception reports as the manager of
19 pharmacy in Perryman?
20 A. Like I said, I don't recall
21 the exception reports.
22 MR. CLUFF: Let's take a
23 break for five minutes. Let me
24 just look at my notes. I think

Page 286

1 I'm done.
 2 THE VIDEOGRAPHER: Off the
 3 record at 2:51 p.m.
 4 (Short break.)
 5 THE VIDEOGRAPHER: We are
 6 back on the record at 2:58 p.m.
 7 MR. CLUFF: This is
 8 plaintiff's counsel, Sterling
 9 Cluff. I'm not in the camera
 10 because Mr. Lavelle and I have
 11 switched seats. I have no further
 12 questioning today for Mr. Frost.
 13 Mr. Lavelle, I understand,
 14 has some redirect so he is going
 15 to take the mic.
 16 MR. LAVELLE: Thank you.
 17 - - -
 18 EXAMINATION
 19 - - -
 20 BY MR. LAVELLE:
 21 Q. Good afternoon, Mr. Frost.
 22 A. Good afternoon.
 23 Q. You were asked some
 24 questions earlier today by plaintiff's

Page 287

1 counsel Mr. Cluff, in which you
 2 referenced a DEA audit in 2012. Do you
 3 recall that testimony, sir?
 4 A. Yes, I do.
 5 Q. Were you involved in the DEA
 6 performing an audit of the Perryman
 7 facility in 2012?
 8 A. Yes, I was.
 9 Q. What was your role with
 10 respect to that audit?
 11 A. Well, it's -- I was
 12 responsible for escorting the two DEA
 13 inspectors through the whole control drug
 14 division -- I mean, cage to show them
 15 physically what we all did, and provide
 16 any documents that the inspectors
 17 required.
 18 Q. All right. I'd like to mark
 19 an exhibit please.
 20 (Document marked for
 21 identification as Exhibit
 22 Rite Aid-Frost-17.)
 23 BY MR. LAVELLE:
 24 Q. All right. Mr. Frost, we've

Page 288

1 put in front of you what we marked as
 2 Exhibit Frost 17. Do you recognize this
 3 document, sir?
 4 A. Yes, I do.
 5 Q. Can you tell us what it is?
 6 A. It's a document that the two
 7 DEA inspectors presented to myself and to
 8 general managers, matter of fact, that
 9 there was a notice of inspection of
 10 control premises, that they were going to
 11 do an audit of our facility.
 12 Q. Do you see that there is a
 13 date on this document?
 14 A. Yes; December 10, 2012.
 15 Q. December 10th, 2000 --
 16 A. I mean, sorry. July 10,
 17 2012. Sorry.
 18 Q. Does looking at this
 19 document, in particular, that date, help
 20 you remember when the DEA came to the
 21 Perryman facility in 2012?
 22 A. Yes.
 23 Q. When was that?
 24 A. 10:50 in the morning.

Page 289

1 Q. And what day?
 2 A. Oh, July 10, 2012.
 3 Q. Is your signature on this
 4 document somewhere?
 5 A. Yes.
 6 Q. Where is your signature on
 7 this document?
 8 A. Right next to Debra Chase's,
 9 down in the bottom right.
 10 Q. Did the DEA tell you in
 11 advance that they were coming?
 12 A. No.
 13 Q. Was it a surprise then?
 14 A. Yes.
 15 Q. Did you spend time with the
 16 DEA in addressing whatever issues they
 17 had during the audit?
 18 A. Yes.
 19 Q. Did you supply information
 20 to the DEA?
 21 A. Yes.
 22 Q. Did they ask questions of
 23 you?
 24 A. Yes.

Page 290

1 Q. Did they come back a second
2 day?
3 A. Yes.
4 Q. Were you involved in their
5 visit the second day?
6 A. I was.
7 Q. What did you do with the DEA
8 the second day they were there?
9 A. Same as the first day, if
10 they wanted other documents that we had
11 to request from corporate or any
12 additional information, we would provide
13 them. And then if they wanted to see the
14 control cage again.
15 Q. Did you have occasion to
16 write up a memorandum summarizing what
17 happened when the DEA came for this
18 audit?
19 A. Yes, I did.
20 MR. LAVELLE: I'd like to
21 mark another exhibit then please.
22 (Document marked for
23 identification as Exhibit
24 Rite Aid-Frost-18.)

Page 291

1 BY MR. LAVELLE:
2 Q. Mr. Frost, we've put in
3 front of you what we marked for
4 identification as Frost 18. It appears
5 to be an e-mail plus a document attached
6 to it. I want to ask you questions about
7 the e-mail first.
8 A. Sure.
9 Q. Do you recognize this
10 e-mail, sir?
11 A. Yes, I do.
12 Q. Did you write this e-mail?
13 MR. CLUFF: Mr. Lavelle, not
14 to interrupt, but I don't know
15 that we got the Bates number on
16 the record for the counsel on the
17 phone.
18 MR. LAVELLE: Okay. I'm
19 sorry. Very good point. For
20 Frost-17, the Bates number was
21 Rite_Aid_OMDL_0032621.
22 For Frost-18, which is a
23 document I currently am discussing
24 with the witness, it's

Page 292

1 Rite_Aid_OMDL_0012547 through
2 2549.
3 Thank you, Mr. Cluff.
4 BY MR. LAVELLE:
5 Q. So I think my question to
6 you, Mr. Frost, was did you send this
7 e-mail?
8 A. I did.
9 Q. And the subject line, can
10 you read that for us, please?
11 A. "Please review DEA audit
12 July 11th."
13 Q. Who did you send this e-mail
14 to?
15 A. All my direct reports, the
16 DEA coordinator, and the DEA clerk.
17 Q. And can you read for the
18 members of the jury who are viewing this
19 video, what you wrote in the text of your
20 e-mail?
21 A. On this first page here?
22 Q. Yes, please.
23 A. "Great job, everyone, for
24 making this audit very successful.

Page 293

1 Please share with our associates."
2 Q. Why did you send this e-mail
3 to the people you sent it to?
4 A. I wanted them to be aware of
5 all of the areas that the DEA auditors
6 looked at.
7 Q. And then we have an
8 attachment to this e-mail. I'd like you
9 to turn to the second page of this
10 document. It's got Bates Number 12548 on
11 it. Do you recognize this document, sir?
12 A. Yes.
13 Q. Did you prepare this
14 document?
15 A. I did.
16 Q. When did you prepare this
17 document?
18 A. On July 11th, after the
19 audit was completed.
20 Q. Why did you prepare this
21 document?
22 A. Well, I wanted all of the
23 addressees on the front of the document,
24 and I did send it to my corporate

<p style="text-align: right;">Page 294</p> <p>1 office -- office as well, to let them 2 know a summary of all the items that the 3 inspectors looked at, and the results of 4 each item that they looked at. 5 Q. All right. Can you read for 6 the members of the jury viewing this 7 video what you wrote under Roman 8 Numeral I at the top of this memo? 9 A. Roman Numeral I, "DC 10 DEA 10 audit results, no findings or 11 discrepancies, 100 percent 12 accountability." 13 Q. What did you mean when you 14 wrote that, Mr. Frost? 15 A. I meant that the DEA 16 inspectors can find nothing wrong or 17 inconsistent with how we operated the 18 control drug cage. 19 Q. What did you mean by 20 100 percent accountability? 21 A. That means every item that 22 we had stored, shipped, or received, we 23 could account for each and every item. 24 Q. All right. I just want to</p>	<p style="text-align: right;">Page 296</p> <p>1 A. "On Tuesday we also 2 conducted a physical count of eight 3 control drug items in both the forward 4 pick and the storage location. 5 100 percent correct. Today the 6 audits" -- "the auditors did an 7 accountability of wholesale years" -- 8 "whole year's worth of receipts, 9 distribution, which is movement, and 10 adjustments of these same eight items, 11 period 2 July, 2011, to 10 July, 2012. 12 The results were 100 percent 13 accountability." 14 Q. And that was accurate when 15 you wrote it? 16 A. Yes. 17 Q. You referred to in that 18 section a physical count of eight CD 19 items. What are you referring to there? 20 What does that mean? 21 A. The inspectors went in there 22 and said, "We want to look at these eight 23 control drug items, and we want to see 24 their storage, their receipts, the</p>
<p style="text-align: right;">Page 295</p> <p>1 take you now through -- briefly what you 2 have under Roman Numeral II, the summary 3 of the audit. 4 Can you read for the members 5 of the jury what you wrote under Number 1 6 there, please? 7 A. Yes. 8 "Two inspectors from the DEA 9 arrived yesterday at approximately 10 10:40 a.m. to conduct an unannounced 11 audit." 12 Q. And was that correct at the 13 time that you wrote it? 14 A. Yes. 15 Q. What did you write on 16 Number 2? 17 A. "On Tuesday they asked for 18 and received an organizational chart, 19 information on med turn, our reverse 20 distributor, which company does our drug 21 testing, which company handles our alarm 22 security, et cetera." 23 Q. And then what do you have 24 under Number 3?</p>	<p style="text-align: right;">Page 297</p> <p>1 distribution, and counts of these items 2 in the control cage." 3 Q. Did the DEA tell you in 4 advance which ones they were going to 5 pull? 6 A. No. 7 Q. Did they ask you to identify 8 which ones to look at? 9 A. No. 10 Q. They just randomly selected 11 some? 12 A. Correct. They just had a 13 list of items that we had in the control 14 cage, and they highlighted eight items 15 and said, "We want to see these items." 16 Q. Is that typical of the way 17 the DEA would conduct an audit in your 18 experience? 19 MR. CLUFF: Objection. 20 Calls for speculation. 21 BY MR. LAVELLE: 22 Q. In your experience, is 23 that -- 24 A. Out of the four, they all</p>

<p style="text-align: right;">Page 298</p> <p>1 did it the same way.</p> <p>2 Q. Number 4, you write that</p> <p>3 some more information about what the DEA</p> <p>4 inspectors arrived and looked at,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. What do you have listed</p> <p>8 there -- it's a long list, and I won't</p> <p>9 ask to you read them all. But you have</p> <p>10 Items A through N that the DEA inspectors</p> <p>11 looked at. What are those items?</p> <p>12 A. Looked at the control cage</p> <p>13 alarm test for vault and entire cage</p> <p>14 between us and checkpoint; provide copies</p> <p>15 of all state and DC licenses, as well as</p> <p>16 copy of the VAWD certificate; listed CD</p> <p>17 vendors and addresses; the filing of any</p> <p>18 thefts or losses that we might have</p> <p>19 occurred for that whole year period;</p> <p>20 looked at inventory results of the</p> <p>21 biennial and annual inventory; went to</p> <p>22 asset protection department to look at</p> <p>23 the camera monitoring room to observe;</p> <p>24 provided copy of CD pick list and receipt</p>	<p style="text-align: right;">Page 300</p> <p>1 to see that Rite Aid demonstrates its due</p> <p>2 diligence by having an excellent</p> <p>3 excessive order monitoring program. They</p> <p>4 mentioned that the DEA is taking a harder</p> <p>5 look at all distributors to ensure that</p> <p>6 order monitoring processes are in place</p> <p>7 and effective."</p> <p>8 Q. Mr. Frost, what do you</p> <p>9 recall about the discussions that you and</p> <p>10 your colleagues had with the DEA</p> <p>11 inspectors about the order monitoring</p> <p>12 program during this audit?</p> <p>13 A. All right. Well, what was</p> <p>14 nice about it when I brought them to the</p> <p>15 control cage, they saw that we had posted</p> <p>16 quantities not to exceed the threshold</p> <p>17 by. And one at random -- just talked to</p> <p>18 one of our pickers, asked them, "What do</p> <p>19 you do if you notice that the light</p> <p>20 lights up more than, for example, this</p> <p>21 item has." And the associate would</p> <p>22 explain to him what they do, talk to a</p> <p>23 lead, or a manager.</p> <p>24 We went from there and</p>
<p style="text-align: right;">Page 299</p> <p>1 POs that we use for receiving; observe</p> <p>2 the associates picking in the cage; and</p> <p>3 observed the associates using the new</p> <p>4 quality assurance stations to verify all</p> <p>5 control drug picks. And they liked the</p> <p>6 fact that we were using technology to</p> <p>7 reduce human error.</p> <p>8 Q. All right. You mentioned</p> <p>9 there under G, "File of thefts and losses</p> <p>10 106s from July 1, 2011, to July 10,</p> <p>11 2012."</p> <p>12 A. Correct.</p> <p>13 Q. What does that refer to?</p> <p>14 A. That would refer to any</p> <p>15 items that we thought through the</p> <p>16 receipt -- receipt process or any process</p> <p>17 that we would have filed with the DEA</p> <p>18 office, in the Baltimore office.</p> <p>19 Q. All right. I next want to</p> <p>20 turn to what you have under Roman Numeral</p> <p>21 III on your memory. Can you read that</p> <p>22 for the members of the jury, please?</p> <p>23 A. "Shout out, both DEA</p> <p>24 inspectors are very impressed and pleased</p>	<p style="text-align: right;">Page 301</p> <p>1 explained the whole excessive order</p> <p>2 monitoring process. We took them to the</p> <p>3 phone logbook, if we had to call the</p> <p>4 store, and what the lead or manager would</p> <p>5 do when they talk to the store, in other</p> <p>6 words find a -- resolve the issue, "Why</p> <p>7 did you order this? You're only going to</p> <p>8 get this amount." Explain why we only</p> <p>9 send them authorized quantity. They</p> <p>10 looked at our quality control purpose on</p> <p>11 how we did 100 percent audit on each and</p> <p>12 every tote and indicated any</p> <p>13 discrepancies on there. So if we had to</p> <p>14 investigate a forward pick we could.</p> <p>15 They were impressed with how</p> <p>16 we did our daily inventories and how we</p> <p>17 kept control of all of our totes that we</p> <p>18 sent to the outbound area, by tote ID and</p> <p>19 by store number and how if we ever on</p> <p>20 occasion thought that we might have</p> <p>21 overpicked a store, that we would</p> <p>22 physically go to the trailers ourselves,</p> <p>23 pull the totes off of the trailers before</p> <p>24 they even went to the stores, and pop all</p>

Page 302

1 the seals to investigate and do a tote
2 audit of those items that we were
3 sending.
4 Q. Let me follow up on a couple
5 of those specific items.
6 A. Sure.
7 Q. Mr. Frost, did you discuss
8 with the DEA that there was a threshold
9 system in place?
10 A. Yes. Established by
11 corporate office.
12 Q. And did you discuss with the
13 DEA during their audit in 2012 that the
14 limit for orders was 5,000 units?
15 A. Yes. We explained that
16 whole process and that's what they liked
17 about it too, that we had something
18 established from our headquarters.
19 Q. Did you discuss with the DEA
20 inspectors that there were some stores
21 for which there was a different limit
22 than 5,000?
23 A. Anything that was above the
24 threshold would have been approved. Yes,

Page 303

1 we discussed it with them, and they were
2 approved only by our corporate offices.
3 Q. Did you show the DEA
4 inspectors the excessive order logs?
5 A. Yes. We showed them all of
6 that.
7 Q. Was there anything that the
8 DEA asked for relating to your order
9 monitoring program that you were not able
10 to provide them?
11 A. Not that -- we were able to
12 provide them anything that they wanted to
13 see.
14 Q. And what was the end result
15 of this review by the DEA, what did they
16 tell you?
17 MR. CLUFF: Objection.
18 Calls for speculation.
19 THE WITNESS: I can only go
20 by what I repeat down here, that
21 they were very happy that we had
22 an effective program, that
23 everybody understood how it
24 operated.

Page 304

1 BY MR. LAVELLE:
2 Q. Did the DEA tell you that
3 you needed to make any changes in the
4 order monitoring program?
5 A. They did not.
6 Q. Now, at the end of this
7 audit, did the DEA give you anything else
8 to tell you that you had completed the
9 audit?
10 A. No. They don't give you any
11 findings or any recommendations. They
12 don't give you any report at all, I
13 believe.
14 Q. So the only document you
15 received from the DEA relating to this
16 audit was what we marked previously as
17 Frost 17; is that correct?
18 A. Correct. That's the only
19 document. They just call -- at the end,
20 they'll summarize it, call the general
21 manager in there and say we find nothing,
22 and then leave.
23 MR. LAVELLE: That's all I
24 have for you. Thank you,

Page 305

1 Mr. Frost.
2 THE WITNESS: You're
3 welcome.
4 MR. CLUFF: Let me break
5 five minutes. Not even five. Two
6 minutes.
7 THE VIDEOGRAPHER: Off the
8 record at 3:13 p.m.
9 (Short break.)
10 THE VIDEOGRAPHER: We are
11 back on the record at 3:20 p.m.
12 - - -
13 EXAMINATION
14 - - -
15 BY MR. CLUFF:
16 Q. Okay. Mr. Frost, we are
17 back on the record. I'm going to have
18 some questions for you about Exhibit 17
19 and 18 which your counsel just discussed
20 with you.
21 A. Okay.
22 Q. Put those back in front of
23 you so we can refer to them easily.
24 Starting with Exhibit 17, I

Page 306

1 believe you testified that this is the
2 notice you got of an unannounced DEA
3 inspection or audit; is that right?
4 A. Yes.
5 Q. Okay. Do you recall the
6 names of the DEA inspectors who conducted
7 this audit over the two days?
8 A. I think one of the
9 gentleman's name was Tush. And I think
10 the other one was Hunt. But I'm not
11 exactly sure.
12 Q. Are those their last names?
13 A. Yeah.
14 Q. If you look down here at the
15 bottom of Exhibit 17, there is a -- there
16 are two signature lines under the heading
17 witnesses in bold. Do you see that?
18 A. Yes.
19 Q. Are those the names of the
20 DEA agents who served this notice?
21 A. Yes.
22 Q. Okay. So it looks like on
23 the first line it's Jeffrey Hunt
24 potentially?

Page 307

1 A. Yes.
2 Q. Does that refresh your
3 recollection about who that was?
4 A. Yes.
5 Q. Looking at the second line,
6 can you tell if that name is Tush or
7 Dush?
8 A. I think it's Tush, T-U-S-H.
9 Q. Okay. Looking at that text
10 before Tush, can you make out who -- what
11 the first name might be?
12 A. No.
13 Q. Do you recall what DEA field
14 office these gentlemen were from?
15 A. I believe they were from the
16 Baltimore office.
17 Q. If I suggested to you that
18 Mr. Tush's first name was Don, would that
19 refresh your -- refresh your
20 recollection? Or Donald?
21 A. It wouldn't refresh it. I
22 mean if I could look into this, it might
23 look like a Donald, but I'm not going to
24 say yes or no on that.

Page 308

1 Q. When you received this
2 notice, did you e-mail anybody within
3 Rite Aid about the fact that you had been
4 served this notice?
5 A. One of our requirements, I
6 think it's ADM 10 or 13, I can't remember
7 which, is for us to notify the corporate
8 office when the DEA inspectors arrive at
9 our facility.
10 Q. Who would that have been in
11 the corporate office that you would have
12 notified?
13 A. It would have been -- at the
14 time it would have been somebody who was
15 handling -- director of compliance,
16 either Kevin Mitchell or Chris Belli was
17 at that time. I just can't remember who
18 it was at the time. And then they would
19 notify vice presidents.
20 Q. You said then they would
21 have notified whom? I'm sorry, I missed
22 it.
23 A. They would have notified any
24 corporate officers that they needed to

Page 309

1 let know.
2 Q. Do you recall whether or not
3 you notified Mr. Mitchell or his
4 colleague in the corporate office?
5 A. No.
6 Q. Do you recall if you had any
7 conversations with anybody from the
8 corporate office by telephone or in
9 person regarding this DEA audit?
10 MR. LAVELLE: Object to
11 form.
12 THE WITNESS: No, I was
13 involved with the auditors.
14 BY MR. CLUFF:
15 Q. Between the first and second
16 day of the audit, did you communicate by
17 phone, in person, or by e-mail with
18 anybody at the corporate office about the
19 first day of the audit?
20 MR. LAVELLE: Object to
21 form.
22 THE WITNESS: I don't recall
23 any conversation or anything like
24 that.

Page 310

1 BY MR. CLUFF:
2 Q. Did you have any
3 conversations with anybody from the
4 corporate office about the second day of
5 the audit?
6 A. I don't recall that.
7 Q. Do you recall whether or not
8 anybody from your corporate office asked
9 you to prepare the memo and the e-mail
10 that are designated as Exhibit 18 to your
11 deposition?
12 A. Nobody asked me to do that.
13 Q. Who is Gary Meihls,
14 M-E-I-H-L-S?
15 A. Senior operations manager.
16 Q. Where does he work?
17 A. Where does he work now?
18 Q. Where did he work in 2012?
19 A. In the DC, Perryman
20 distribution center.
21 Q. Okay. The subject line of
22 Exhibit 18, if you look at that for me,
23 is, please review DEA audit July 11th.
24 Do you see that?

Page 311

1 It's 18. To your left.
2 A. Oh. Okay.
3 Q. Yeah, looking at the subject
4 line, do you see please review?
5 A. Mm-hmm.
6 Q. Were you asking him to
7 review the memo that you wrote?
8 A. Was I asking who?
9 Q. Gary Meihls.
10 A. Meihls. Let me see if his
11 name is on here.
12 Q. Yeah, we'll start at the
13 top.
14 A. I don't see his name listed
15 here.
16 Q. Sorry, I was using a
17 different version of Exhibit 18.
18 A. Okay.
19 Q. The subject line of
20 Exhibit 18, if you look at that, is still
21 please review DEA audit July 2011. Why
22 was it important to you or why were you
23 asking these people who received
24 Exhibit 18 to review the DEA audit July

Page 312

1 11 letter?
2 MR. LAVELLE: Object to
3 form.
4 THE WITNESS: Well, it was
5 important to me that they were all
6 my direct reports and it indicated
7 in the summary of all the audit
8 results, all the areas that we're
9 always striving to do our best in
10 that were looked at.
11 BY MR. CLUFF:
12 Q. You previously talked about
13 that during the inspection you took the
14 DEA auditors into the controlled cage; is
15 that right?
16 A. Yes.
17 Q. And you said that the
18 auditors talked to an associate?
19 A. Yes.
20 Q. Were you present for every
21 part of that conversation, or did you
22 just see it occurring?
23 MR. LAVELLE: Object to
24 form.

Page 313

1 THE WITNESS: I remember us
2 approaching the pick area, and the
3 auditor asking an associate some
4 questions.
5 BY MR. CLUFF:
6 Q. What were the questions that
7 he asked the associate?
8 A. I don't know exactly what
9 they asked.
10 Q. Okay. Then how do you
11 recall what the answers were?
12 A. What do you mean? I don't
13 understand.
14 Q. You previously testified the
15 associate would explain to him what they
16 do, talk to a lead or a manager. My
17 question was, what were the questions?
18 And you said you don't recall. But here
19 you've testified that you recall what the
20 associate told the DEA auditor?
21 A. Oh, I asked -- I remember
22 them asking them, "So you use excessive
23 order monitoring." And the associate
24 said, "Yes." And they said, "Can you

Page 314

1 explain that to me." So that part I did
2 hear.
3 Q. I'm confused. I previously
4 asked you if you recalled what questions
5 the auditor asked the associate. And you
6 told me that you didn't recall. But now
7 all of the sudden you recall again?
8 MR. LAVELLE: Object to
9 form.
10 THE WITNESS: Because I
11 remembered that we had the posting
12 there, and he made a point of
13 asking the associate about that
14 posting.
15 BY MR. CLUFF:
16 Q. Okay. You previously
17 discussed the posting.
18 Well, do you remember who
19 the associate was?
20 A. No, I don't.
21 Q. Okay. This Exhibit 18 and
22 Exhibit 17 together indicate that the
23 audit occurred between 7/10 and 7/11; is
24 that correct?

Page 315

1 A. Yes.
2 Q. Okay. Is there someplace
3 where I could find records of which
4 associates were in the cage that day or
5 those two days?
6 A. No.
7 Q. So just to be clear, you
8 remember the answers to the questions
9 that the DEA auditor asked but you do not
10 remember who the associate was?
11 A. Yes.
12 Q. Okay. And then back to my
13 question, is there anywhere that I could
14 find a log of who accessed the cage on
15 those two days?
16 A. I don't know of any such log
17 or record or anything going back -- going
18 back nine or seven years.
19 Q. Was it not Rite Aid's policy
20 or procedure in 2012 to keep a record of
21 people who accessed the control cages at
22 that time?
23 MR. LAVELLE: Object to
24 form.

Page 316

1 THE WITNESS: No.
2 BY MR. CLUFF:
3 Q. So it was not the policy?
4 A. No.
5 MR. LAVELLE: Object to
6 form.
7 BY MR. CLUFF:
8 Q. Please look at Exhibit 18.
9 And look at the memo that you wrote.
10 A. Okay.
11 Q. Did anybody else review this
12 memo before you disseminated it to the
13 associates at the Perryman distribution
14 center?
15 A. No.
16 Q. Did you send this to anybody
17 at corporate to review before you sent it
18 out?
19 A. No.
20 Q. Let's look at Item Number 4.
21 It starts, "Today the DEA inspectors
22 arrived at 10:20 and continued looking
23 at." And then your counsel showed you
24 that there are Subparagraphs A through N.

Page 317

1 A. Mm-hmm, yes.
2 Q. Do you recall -- do you
3 recall what day you wrote this memo on?
4 A. I believe I wrote it on the
5 11th, because it was a two-day audit.
6 Q. Would you agree that this
7 document was more accurate than your
8 current recollection today?
9 MR. LAVELLE: Object to
10 form.
11 THE WITNESS: If I typed it
12 on the 10th or the 11th, then it
13 would be more accurate than seven
14 years later.
15 BY MR. CLUFF:
16 Q. So to the extent that you're
17 testifying today about things that you
18 recall that are not reflected in this
19 document, they are less accurate than the
20 document itself?
21 MR. LAVELLE: Object to
22 form.
23 THE WITNESS: No.
24 BY MR. CLUFF:

Page 318

1 Q. Why is that?

2 A. Why is my recollection more

3 accurate than what's on the document?

4 Q. Yes.

5 A. I might not have included

6 everything on the document.

7 Q. You didn't want to be

8 thorough and complete when you wrote a

9 memo bragging about how good Rite Aid did

10 in a DEA audit?

11 MR. LAVELLE: Object to

12 form.

13 THE WITNESS: I think I was

14 pretty thorough and complete.

15 BY MR. CLUFF:

16 Q. This is a thorough and

17 complete recollection of what happened?

18 MR. LAVELLE: Object to

19 form.

20 THE WITNESS: Yes.

21 BY MR. CLUFF:

22 Q. Okay. So then, your

23 recollection, to the extent that it does

24 not comply with this memo, is inaccurate,

Page 319

1 correct?

2 MR. LAVELLE: Object to

3 form.

4 THE WITNESS: No.

5 BY MR. CLUFF:

6 Q. Again, why is that?

7 MR. LAVELLE: Object to

8 form.

9 THE WITNESS: I thought I

10 was thorough and put everything in

11 here that I could recollect.

12 BY MR. CLUFF:

13 Q. Okay. So your counsel

14 earlier asked you to testify to the jury,

15 in case the jury gets to watch this video

16 today. And what I'm asking you today is,

17 which should we rely on, your

18 recollection or the memo that you wrote

19 on the day of the DEA audit?

20 MR. LAVELLE: Object to

21 form.

22 BY MR. CLUFF:

23 Q. And my question earlier to

24 you was, did you mean for this to be a

Page 320

1 full and complete statement of what you

2 recalled at the time that you wrote it

3 about the DEA audit that occurred on the

4 10th and 11th of July in 2012?

5 MR. LAVELLE: Object to

6 form. Objection, asked and

7 answered.

8 THE WITNESS: No. It was

9 just a summary of what we went

10 through during the audit.

11 BY MR. CLUFF:

12 Q. You previously testified

13 that the DEA auditors spoke with an

14 associate whose name you can't recall --

15 A. Yes.

16 Q. -- about what was happening

17 in the control cage, correct?

18 A. Yes.

19 MR. LAVELLE: Object to

20 form. Objection, asked and

21 answered.

22 BY MR. CLUFF:

23 Q. Can you tell me where that's

24 included in this memo?

Page 321

1 A. I don't see it included in

2 the memo.

3 Q. Okay. So that didn't matter

4 to you when you wrote this letter,

5 correct?

6 MR. LAVELLE: Object to

7 form.

8 THE WITNESS: No.

9 BY MR. CLUFF:

10 Q. What's your recollection

11 based on then, since that's not included

12 in this memo?

13 MR. LAVELLE: Object to

14 form. Objection, asked and

15 answered.

16 THE WITNESS: Please

17 rephrase -- repeat your question.

18 BY MR. CLUFF:

19 Q. Let's move on.

20 You talked about showing the

21 DEA auditors the phone logs, correct?

22 A. Yes.

23 Q. The excessive order logs?

24 A. Yes.

Page 322

1 Q. Okay. At the time you
2 showed them the phone logs did you inform
3 the DEA auditors that you conduct no due
4 diligence before cutting an order?
5 MR. LAVELLE: Object to
6 form.
7 THE WITNESS: What was that
8 again?
9 BY MR. CLUFF:
10 Q. Did you inform the DEA
11 auditors that when you receive an order
12 that exceeds threshold, you do no due
13 diligence before you cut the order?
14 MR. LAVELLE: Object to
15 form.
16 THE WITNESS: What does that
17 mean, no due diligence before cut
18 the order?
19 BY MR. CLUFF:
20 Q. Do you see -- let's look at
21 Exhibit 18, the memo.
22 A. Okay.
23 Q. Roman Numeral III. Do you
24 see that?

Page 323

1 A. Yes, I do.
2 Q. Do you see in the second
3 line, it says that, "Rite Aid
4 demonstrates its quote due diligence"?
5 A. Yes.
6 Q. Do you know what due
7 diligence is?
8 A. Yes. I have my definition
9 for due diligence.
10 Q. Okay. Did you do any due
11 diligence at Rite Aid before cutting an
12 order to bring it back under threshold?
13 MR. LAVELLE: Object to
14 form.
15 THE WITNESS: Yes. We
16 cut -- we cut the order.
17 BY MR. CLUFF:
18 Q. That's the extent of Rite
19 Aid's due diligence?
20 MR. LAVELLE: Object to
21 form.
22 THE WITNESS: No. After
23 that, we would -- if it was
24 excessive to the threshold, we

Page 324

1 would write it down on the phone
2 log.
3 BY MR. CLUFF:
4 Q. And that's the extent of the
5 due diligence?
6 A. And call the store and let
7 them know that they were ordering more
8 than their threshold, and we were only
9 sending them what we were authorized to
10 send them by corporate and asked them why
11 they might have put that down, ordered
12 more than it was supposed to.
13 Q. In that process, did you
14 tell the DEA auditors that Rite Aid never
15 reports orders as suspicious to the DEA?
16 MR. LAVELLE: Object to
17 form.
18 THE WITNESS: No.
19 BY MR. CLUFF:
20 Q. Did you tell the DEA
21 auditors that the Perryman distribution
22 center had never reported a suspicious
23 order during your tenure as the manager
24 of the pharmacy department?

Page 325

1 A. No.
2 Q. So that information was
3 withheld from the DEA, correct?
4 MR. LAVELLE: Object to
5 form.
6 THE WITNESS: No.
7 BY MR. CLUFF:
8 Q. No, it was not withheld?
9 A. No.
10 Q. I'm sorry. I just asked if
11 you told the DEA that information. You
12 said no.
13 A. Correct.
14 Q. Aside from this memo that
15 you wrote that's not an official
16 statement of the DEA, are you aware of
17 any other document reflecting approval by
18 the DEA of any policy or procedure that
19 Rite Aid had in place between 2003 and
20 2014?
21 MR. LAVELLE: Object to
22 form.
23 THE WITNESS: I don't know
24 what they have document wise.

<p style="text-align: right;">Page 326</p> <p>1 BY MR. CLUFF:</p> <p>2 Q. Have you ever received a</p> <p>3 communication from the DEA in writing</p> <p>4 telling you that the policies and</p> <p>5 procedures in place at Perryman between</p> <p>6 2003 and 2014 were in compliance with DEA</p> <p>7 regulations?</p> <p>8 MR. LAVELLE: Object to</p> <p>9 form. We're beyond the scope of</p> <p>10 the redirect at this point.</p> <p>11 THE WITNESS: Well, again,</p> <p>12 we had four audits from DEA.</p> <p>13 They're not required to give us</p> <p>14 any kind of information at all.</p> <p>15 And at their briefings they don't.</p> <p>16 This is the kind of document that</p> <p>17 they give us. No findings, no --</p> <p>18 they don't do anything else.</p> <p>19 BY MR. CLUFF:</p> <p>20 Q. I understand that. That's</p> <p>21 not my question.</p> <p>22 My question is, now in the</p> <p>23 four audits that you've just referred to,</p> <p>24 have you ever once received a statement</p>	<p style="text-align: right;">Page 328</p> <p>1 time is 3:35 p.m. We are off the</p> <p>2 record.</p> <p>3 (Excused.)</p> <p>4 (Deposition concluded at</p> <p>5 approximately 3:35 p.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 327</p> <p>1 from the DEA about the Perryman</p> <p>2 distribution center indicating that the</p> <p>3 DEA believed it was in compliance with</p> <p>4 DEA regulations?</p> <p>5 A. We had statements when we</p> <p>6 expanded the control cage that it was</p> <p>7 compliant.</p> <p>8 Q. So the control cage is the</p> <p>9 only instance that you can tell me where</p> <p>10 DEA officially said you're in compliance?</p> <p>11 MR. LAVELLE: Object to</p> <p>12 form.</p> <p>13 THE WITNESS: No, I can't</p> <p>14 remember anything else.</p> <p>15 BY MR. CLUFF:</p> <p>16 Q. Okay.</p> <p>17 MR. CLUFF: That's all I</p> <p>18 got.</p> <p>19 MR. LAVELLE: No further</p> <p>20 questions for the witness.</p> <p>21 The witness reserves the</p> <p>22 right to read and sign.</p> <p>23 THE VIDEOGRAPHER: This</p> <p>24 concludes this deposition. The</p>	<p style="text-align: right;">Page 329</p> <p>1</p> <p>2 CERTIFICATE</p> <p>3</p> <p>4</p> <p>5 I HEREBY CERTIFY that the</p> <p>6 witness was duly sworn by me and that the</p> <p>7 deposition is a true record of the</p> <p>8 testimony given by the witness.</p> <p>9</p> <p>10 It was requested before</p> <p>11 completion of the deposition that the</p> <p>12 witness, KEITH FROST, have the</p> <p>13 opportunity to read and sign the</p> <p>14 deposition transcript.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>13 MICHELLE L. GRAY, A Registered Professional Reporter, Certified Shorthand Reporter, Certified Realtime Reporter and Notary Public Dated: January 18, 2019</p> <p>19 (The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)</p>

Page 330

INSTRUCTIONS TO WITNESS

1
2
3 Please read your deposition
4 over carefully and make any necessary
5 corrections. You should state the reason
6 in the appropriate space on the errata
7 sheet for any corrections that are made.
8 After doing so, please sign
9 the errata sheet and date it.
10 You are signing same subject
11 to the changes you have noted on the
12 errata sheet, which will be attached to
13 your deposition.
14 It is imperative that you
15 return the original errata sheet to the
16 deposing attorney within thirty (30) days
17 of receipt of the deposition transcript
18 by you. If you fail to do so, the
19 deposition transcript may be deemed to be
20 accurate and may be used in court.
21
22
23
24

Page 331

- - - - -
E R R A T A
- - - - -

1
2
3
4 **PAGE LINE CHANGE**
5 _____
6 **REASON:** _____
7 _____
8 **REASON:** _____
9 _____
10 **REASON:** _____
11 _____
12 **REASON:** _____
13 _____
14 **REASON:** _____
15 _____
16 **REASON:** _____
17 _____
18 **REASON:** _____
19 _____
20 **REASON:** _____
21 _____
22 **REASON:** _____
23 _____
24 **REASON:** _____

Page 332

ACKNOWLEDGMENT OF DEPONENT

1
2
3
4 I, _____, do
5 hereby certify that I have read the
6 foregoing pages, 1 - 333, and that the
7 same is a correct transcription of the
8 answers given by me to the questions
9 therein propounded, except for the
10 corrections or changes in form or
11 substance, if any, noted in the attached
12 Errata Sheet.
13
14
15 _____
16 **KEITH FROST** **DATE**
17
18
19 Subscribed and sworn
20 to before me this _____
21 _____ day of _____, 20____.
22 My commission expires: _____
23
24 _____
25 **Notary Public**

Page 333

LAWYER'S NOTES

1 **PAGE LINE**
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24